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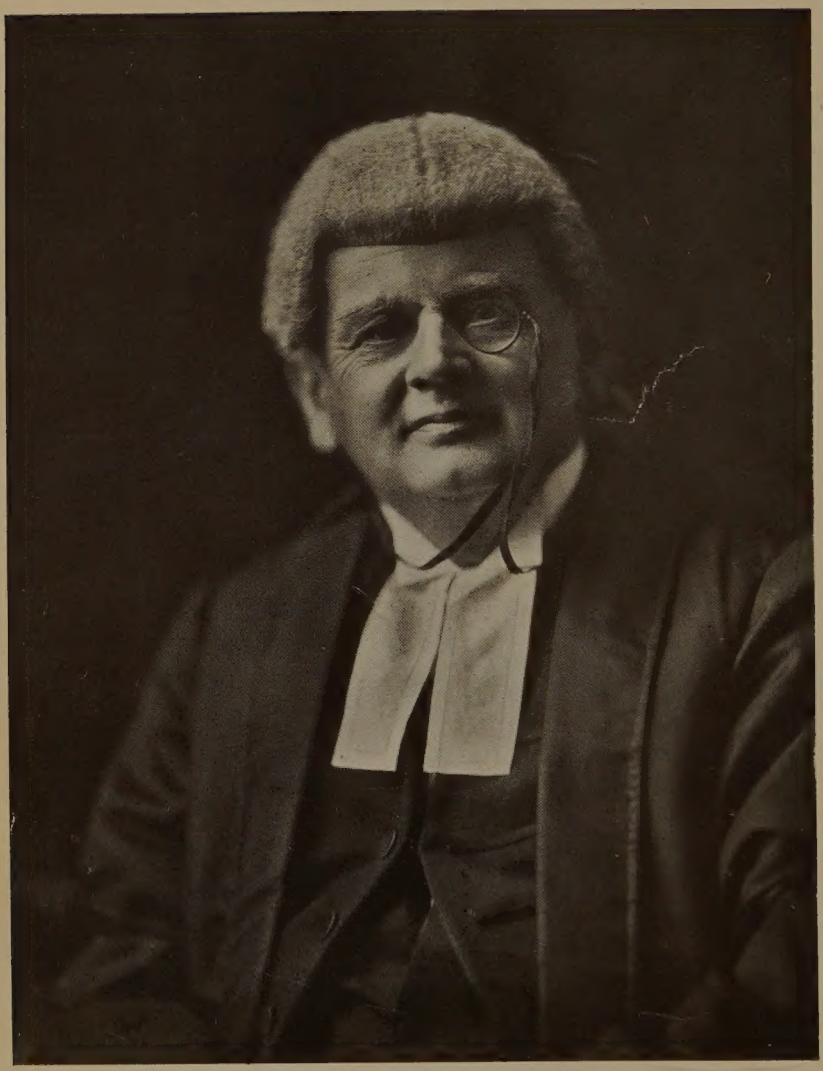

MR. JUSTICE ALPERS.

[*Frontispiece*

Cheerful Yesterdays

By

THE HON. O. T. J. ALPERS
A Judge of the Supreme Court of New Zealand

WITH A PREFACE BY THE
EARL OF BIRKENHEAD, P.C.

"A man he seemed of cheerful yesterdays
And confident to-morrows."
WORDSWORTH'S "Excursion."

LONDON
JOHN MURRAY, ALBEMARLE STREET, W.

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TO

MY WIFE

WE HAVE BEEN SUCH CHUMS

TOGETHER

PREFACE

IT has so often been said that America is the Land of Opportunity that some of us are in danger of forgetting that this title—and I know of no nobler one—belongs of older right to our own Empire. The British Empire even to-day yields to no other comity of States in the possibilities it affords to energetic and brilliant youth of every class to achieve fortune, rank, and fame. This is its most compelling claim to our patriotism; the demonstration of true democracy; the foundation of our greatness as a people. And because of this I especially welcome the publication of the memoirs of Mr. Justice Alpers.

Oscar Thorwald Johann Alpers was born at Copenhagen, in Denmark, on January 28th, 1867. When the boy was only eight years old and spoke not a word of any language but his own, his father, true to the Viking instincts of his race, saw a vision of fortune regained in a new world. With his wife and two children he set sail for New Zealand. The whole wealth of the family when they set foot on shore at Napier was only fourteen pounds.

The boy began to earn his own living at the age of twelve, in a strange country speaking a strange

tongue, without friends, without influence, without means. In the sequel, forty-five years later, he took his seat on the Bench of the Supreme Court as a Judge. These memoirs show what striving, what trials, what industry, courage, integrity, and ambition went to the making of so magnificent a career.

Then, in the very moment of triumph, he was struck down by Fate. He had surrendered a growing practice at the Bar to assume the honour of a Judgeship, despite the fact that three children of tender age were dependent on his salary. After a few happy months he knew himself afflicted with the cruellest of all scourges—cancer. There followed a grave operation, a year of fluctuating hopes, and then—as he wrote to me only last October in a letter brimful of the cheerful courage with which he bore his sufferings—" leave of absence."

His only anxiety was the future of his family. There is no pension or other provision in New Zealand for the widow or children of Judges. But I am loath to believe that the Dominion will fail to make adequate provision for the dependents of one whose career has done it so much honour.[1]

Alpers began the dictation of these memoirs to his wife eight days after the operation. The finger of death was already pointing to him when he ended them. " My book, if it is published at all, will, I fear, be posthumous," he prophesied in his last paragraph. His foreboding was realised. Before the manuscript reached the publishers in

London, " leave of absence " had been given him, and the cables announced the passing of this brave and distinguished life.

I confidently recommend his book to the Press and to readers of all ages as a worthy record of a fine personality and a valiant career, and as a tribute both to a vigorous Dominion and to an Empire proud to number among its foster-children such men as Oscar Alpers.

BIRKENHEAD.

December 1927.

[1] The New Zealand Government has given the widow a gratuity of £1,500, thus fulfilling Lord Birkenhead's prophecy.

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From a caricature by Kennaway in the "Weekly Press," N.Z.

PART I

Chapter I

INTRODUCTORY

ON May 7th, 1875, I stood beside my father, mother, and sister, a solemn little boy between eight and nine, upon the deck of the steamship *Falster* as she sped southwards across the waters of the Sound and we took our last look at the spires and towers of Copenhagen, beloved city of our birth, now fast fading from sight upon the horizon. We made Lübeck next morning; entrained there for Hamburg, and embarked upon the good ship *Friedeburg*, then lying in Elbemouth, off Cuxhaven, to sail on the morrow for the port of Napier, Hawke's Bay, New Zealand.

Had I but known it, I was setting out upon a great adventure. I was about to change my hemisphere, my nationality, and my mother-tongue. Not one of us knew a single word of the language of the country we were going to. Nor did we know much else about it, except vague stories we had heard of Maori wars, but recently concluded, of "Hauhaus" and cannibals, and of nuggets of rich red gold to be gathered by the wayside. It was the Land of Hope, where my father proposed to himself to repair his broken fortunes and begin life anew. He was over forty years of age; he had a wife and two children dependent upon him; and all his

worldly possessions he carried in his pocket in a leather wallet; it was what he had saved from the wreck after paying his debts, and amounted to the sum of fourteen pounds sterling. But he was a visionary, a dreamer of dreams, and nothing daunted him.

Fifty years later, on February 24th, 1925, in that same town of Napier where we had landed and where I had lived during my earlier years in the Colony, I took my seat for the first time upon the Bench of the Supreme Court, on circuit, as one of His Majesty's Judges. A few months later, in the city we had left half a century before, the papers published the news of my appointment with summaries of my career, expressing a kindly interest—not unnatural in a very small country—in the fact that for the first time in history a Dane had been chosen to be "Højesteretsdommer"—a Judge of the Supreme Court in the great British Empire.

The fifty years that lie between have all been lived in this little Colony. I have therefore not been brought into contact with great events or great characters in history. I have accomplished nothing, either in public affairs or in private life, that would justify me in "making a song about it," still less a book. And yet, even in these circumscribed surroundings, my life has been various and adventurous, diversified with something of the humour and romance of early colonisation, always strenuous, sometimes bizarre, but never at any time, I think, dull. I have earned my own livelihood since I was twelve and a half years old, and would not for anything have missed the fun and joy of doing it. Pupil teacher and tradesman's clerk, college student

and university lecturer, schoolmaster and journalist, amateur actor and platform speaker—I have tried them all and enjoyed them all with a zest that has never flagged. And when at the age of thirty-eight I was admitted to the Bar and entered upon my twenty years' career as advocate, I found in this new art all that it holds in store for those who faithfully and zealously pursue it—rich treasures of human experience, streaked and veined with the gold of humour.

I propose in this book to set down in plain and simple language a plain and simple narrative of those fifty years. I fully realise that of reminiscences and anecdotes of journalists and barristers, and even of schoolmasters, the reading public has of late years had an oversupply. I venture to hope that their colonial setting may give to mine some sense of freshness; and I can at least promise that in the course of writing the book I shall not forget the exhortation of Horace, "Misce stultitiam consiliis brevem."

But it is not without much inward trepidation that I approach the task I have set myself. The first part of my book, for example—that in which I propose to recount my efforts to scrape up a more or less adequate education and to qualify myself for some profession or other—suppose my readers should mistake me for Dr. Smiles and my book for a colonial version of "Self-Help"! It is true I have never read a single line of the edifying works of that didactic pietist, but suppose——! Well, all I can say is that I defy the most diligent search to discover even the semblance of a "moral" in any one of my chapters.

And as to the second part, that is intended to be a narrative of twenty years of work at the Bar. In it I propose to write something about cases in which I was counsel ; but I seem to have forgotten all those I lost and to remember only those I won. Then, too, I want to illustrate the art of advocacy by citing here and there an instance of effective cross-examination or a point that went home with a jury, of a speech that won a case or a quip that pleased a Judge. But there again all the really good things I have no doubt my colleagues at the Bar brought off persistently elude my memory, while the odd " lucky hits " that were my own obtrude themselves with unblushing pertinacity on my recollection. How, then, can I hope to escape the sin that besets so many writers of memoirs ?

I consulted some of my friends about this difficulty, and their advice was given with characteristic frankness.

" Well, you know," said the first, " modesty is really a very poor virtue ; and your worst enemy has never suspected you of intemperate indulgence in it, so why worry ? "

This didn't sound quite satisfactory somehow, so I tried another.

" My dear fellow," said he, " you have set yourself to write the story of your life ; that absolutely dwarfs all lesser egotisms. The reader who can forgive you the major offence won't even notice the minor ones."

This, if anything, was worse, I thought. So I went along to a third, and as to his answer—well, I must leave the reader to judge whether I can any longer call him " friend."

"Make your mind easy," said this amiable paragon of candour. "If your anecdotes and your 'good things' were only one-half as clever or one-fourth as funny as you think they are, you might be suspected of vanity in retailing them; but really, you know, *they simply aren't.*"

And so, as I clearly cannot trust to the indulgence of my friends, I must needs trust to that of my readers—"gentle readers" they used to be called in the dear old Victorian days. May they still deserve that epithet, and may none of them so ungentle his condition as to count the number of capital "I's" in this book!

Chapter II

DENMARK AND THE DANES

THIS chapter is not a lesson in geography, either physical or political. I fear it is not even relevant to the scheme of the book that I have just outlined in the first chapter. But a book of this sort has really no business to have anything so formidable as a "scheme," so the sooner it's departed from the better.

But although I have become, I hope, as good an Englishman as another, I am by birth and parentage a Dane; and my ancestors have been Danes on both sides for a number of generations. I still retain my mother-tongue, and was for many years, in the strictest sense, bi-lingual. Moreover, for a long time after I came to New Zealand I was "bi-national"—if the coinage be permissible—to my own great puzzlement and embarrassment. It was not till the Salisbury-Chamberlain policy of the middle nineties, culminating in the Diamond Jubilee celebrations—not quite, perhaps, till the part this Colony took in the Boer War stirred our hearts like a trump—that I suddenly realised I had at last become completely English in sentiment as well as in language, and that I could have answered, for the first time without hesitation, Pistol's truculent question, "Under which King, Bezonian? Speak or die!"

So it is fitting after all, I think, that I begin my story with some account of my own countrymen. Perhaps, too, it will conciliate my readers to find that, in this chapter at any rate, I have a good deal to say about other people and not very much about myself.

. . . . . .

There was a time when Denmark played no insignificant part in the politics of Europe and occupied no inconsiderable space upon the map. To-day it contents itself with the modest ambition of supplying butter for the tables and princesses for the thrones of Europe; and both are of the highest quality.

The King who occupied the throne in my school-days was Christian IX. One of his sons, George, became King of Greece; a grandson, Haakon, was chosen King of Norway. Of his daughters, one became Queen of England, another Empress of Russia, a third the reigning Duchess of a German State. And so his consort, Queen Louise, came to be called affectionately "The Mother-in-law of Europe."

His butter, too, was of the best, for he was a farmer as well as a monarch. For more than a quarter of a century his name was seldom absent from the prize-lists of agricultural shows of importance. It was always in his lifetime regarded as a pleasing compliment if a host could tell his guest that it was "King's butter" that was served at table.

I actually met him once, and had him for ten whole minutes all to myself. The incident made an indelible impression on my memory, and may

serve, perhaps, to explain one of the reasons why the Danes so loved him, much as the English had already come to love his daughter Alexandra.

It must have been in the summer of 1874, when I was about eight years old, that I had occasion one day to make a detour on my way home from school which brought me past the gates of Amalienborg, the palace where the King and his family usually resided when in the capital. It was, I remember, a hot summer's day—and summer days can be scorching in Copenhagen. There were usually two sentries posted outside the palace gates, but on this occasion, for some reason, there was but one, and he, overcome with the heat, had sought the shade of his little sentry-box for a moment, no doubt, and fallen fast asleep. At any rate, there he sat in his box, his hands crossed on the butt of his carbine and his chin resting on them. And through the wide palace gates I spied the glorious beds of forget-me-nots—such forget-me-nots as grow nowhere except in Copenhagen, unless it be at the North Cape. I could not resist the wish to have a closer look at those forget-me-nots, so I slipped past the sleeping sentry, in through the gates, and then crossed the lawns to the flower-beds. I don't know how long I had been there—I was always a dreamy, absent-minded youngster—when suddenly I felt a hand upon my shoulder and heard a voice say, " Naa, lille dreng, hvad bestiller du her ? " (" Well, little boy, and what are you doing here ? "). I looked up—it was the King ! I knew him at once from pictures and photographs : a handsome old man, or so he seemed to me, with most kindly smiling eyes. I was startled, but not frightened ;

it was quite impossible for anyone to be afraid of Christian IX. I hastily swept my cap off with my best bow—very small boys are taught to do such things in Denmark—and explained that the sentry was asleep and the forget-me-nots were very beautiful, so I slipt in past the sentry and there I was! With a droll smile, almost boyish in its enjoyment of the situation, the old King said to me, "It wasn't such a very dreadful thing to slip in past the sleeping sentry: *I've just done it myself.*" And then he took me by the hand and led me through the grounds for quite ten minutes, talking away about the flowers, the school I went to, the story-books I liked, and very soon I was completely at my ease. There was not a soul visible in the grounds or on the porches—it was the hour of siesta. Then the King took me to the gates, and I remember how he said with a twinkle in his eyes, "I wonder if he is still asleep!" But no, the sentries (both were there now) were doing their "strut"—Danish as well as German soldiers affected the fantastic "goose-step"—with a vigour and alertness obviously intended to dispel the mere suspicion that either could ever have slept at his post. And with a whimsical smile for my sole benefit, at the expense of the wide-awake sentries, and a bright "Farvel, lille dreng" ("Good-bye, little boy"), he dismissed me.

When the Prince of Wales visited New Zealand in 1920, and the Duke of York followed him in 1927, this boyhood experience was again and again recalled to my memory. Their love of sheer fun, the easy grace of manner that marked their intercourse with all classes, above all, that way they both

had with children which won the hearts of the hordes of colonial youngsters who were assembled to meet them at every town and village they passed through, brought back with vivid intensity my own short meeting with their great-grandfather in the garden of Amalienborg half a century before. My digression on the laws of heredity is not, I hope, entirely fanciful or entirely due to my ineradicable bias in favour of all things Danish.

. . . . . .

The average Englishman, I fear, knows very little of my country. " Brazil, where the nuts come from " ; " Denmark, where the butter comes from " : such phrases sum up his knowledge of these places.

And so far as he knows more than that about Denmark, his knowledge comes from an unreliable source. For to the educated Englishman Denmark is essentially the country where Hamlet saw ghosts and meditated upon the problems of existence.

Now, Hamlet—or Amleth, as he is more correctly called—was a barbarian chieftain of Jutland, the Danish mainland. He never walked upon the battlements of Elsinore, for the reason that there were then no battlements to walk upon ; he never even visited Elsinore, for the reason that there was then no Elsinore to visit. Yet he was buried there. Danes were for a long time sceptical upon the point, but the numerous tourists who yearly visit " Hamlet's grave " in the grounds of Elsinore Castle have gone far to remove the national scepticism. There is at least one man in Denmark who has no doubt on the subject ; that is the enterprising custodian who levies a toll of one krone per head

of those devout tourists who make pilgrimages to the tomb of Shakespeare's immortal Prince of Denmark. The simple slab and cross over Hamlet's grave is of a friable sandstone. Of this the pious tourist breaks off pieces and carries them away as mementoes of his visit. The stone has accordingly to be replaced every few years; but the tourist, especially if he be a member of a Shakespeare Society, still goes on believing.

There are unfortunately several passages in Shakespeare's play that have gone far to produce an erroneous impression of my country. There are, in the first place, persistent references to Hamlet's "melancholy"—so many that he is constantly described in hackneyed phrase as "the Melancholy Dane," much as Shakespeare himself is spoken of as "the Bard of Avon," and by the same sort of people.

Commentators and critics here unblushingly call statistics to their aid; as though Shakespeare ever cared a fig for statistics. Yet it is a fact which I cannot deny that Denmark holds, or held till recent years, a world's record for suicides. Two-thirds of these are men over sixty—bachelor men, let me add; but I have less fault to find with the number of my countrymen who commit suicide than with their method of doing it. I am sorry to say that they resort to the undignified, inelegant, and ungentlemanly process of hanging. How much more graceful to follow the suggestion of Hamlet himself and "their quietus make with a bare bodkin!"

Then again, in the first scene between Hamlet and Horatio, there is the famous reference to the "Drunken Danes." Shakespeare had heard some

travellers' tales, perhaps, in which the Danes were spoken of as hard drinkers, or he had acquired the information from some of the actors in his company who had recently played a "season" in Elsinore and Copenhagen. Here, at all events, was just that little dash of "local colour" he so dearly loved to work into his canvas on occasion.

So eager is Shakespeare to work it in and to display his information about the drinking customs of the Danes that he makes Horatio, a native of the country, inquire about them as though he were a foreigner paying a first visit to Denmark :

A flourish of trumpets, and ordnance shot off, within.

HOR. What does this mean, my lord ?

HAM. The king doth wake to-night and takes his rouse,
Keeps wassail, and the swaggering up-spring reels ;
And, as he drains his draughts of Rhenish down,
The kettle-drum and trumpet thus bray out
The triumph of his pledge.

HOR. Is it a custom ?

HAM. Ay, marry, is't ;
But to my mind, though I am native here
And to the manner born, it is a custom
More honour'd in the breach than the observance.
This heavy-headed revel east and west
Makes us traduc'd and tax'd of other nations :
They clepe us drunkards, and with swinish phrase
Soil our addition.

But is Shakespeare quite justified in his inference ? The fact that on each occasion when the King is minded to slake his thirst "ordnance" is "shot off" and "kettle-drum and trumpet thus bray out," suggests much pomp about the Royal potations but not necessarily depth or frequency. Indeed, the

formidable business of re-loading the "ordnance," of standing to fire-stations with the fuses ready—to say nothing of the trumpeters tuning up their instruments for another blast—might conceivably prolong the "time between drinks" to an interval which the famous Governor of North Carolina would never in his time have tolerated.

But the Dane of to-day, at any rate, is certainly not a hard drinker, though his drinking is still done, if not with all the pomp and circumstance affected by Claudius, at least with much ceremony. Your Dane is no "silent drinker"; he does not sit and sip his own glass regardless of his companions and carefully look the other way when the waiter comes round to replenish it. He awaits the challenge from the host or toast-master—"Skal vi ta' den?" ("Shall we take it?"); and then the company, rising, clink their glasses together, and with a cheery chorus of "skaal," proceed to drink. There is always a toast to excuse the drink. If no other suggests itself, then it is:

Min skaal, din skaal,
Alle vakkre pigers skaal.

(My health, thy health,
All bonny lasses' health.)

There is one little drinking ceremony still used, I hope, among good Danes which has always appealed to me as naïvely characteristic of their pleasant friendliness one with another. When two men, or two women for that matter, feel that they have proceeded beyond the stage of mere acquaintance-ship and are drawn towards something warmer,

then over a glass one will say to the other, " Shall we drink, ' thou ' ? " and, each holding his glass in his right hand, they interlock their right arms and, so standing, drink. Ever after they say " thou " and " thee " to each other instead of using the formal plural, and they are friends and " sworn brothers " for life.

The Danes are a polite and well-mannered people. I venture to say that a Copenhagen artisan is the best-mannered man of his class in Europe. To a foreigner, perhaps—and especially to an Englishman—this politeness may seem a little overdone. A Dane takes off his cap when he meets his own brother in the street ; an Englishman of the same class may meet his wife with a cheery " Hullo, Mary ! " and forget to lift his hat. You never see a Copenhagener in a shop, especially if there be women behind the counter, with his hat on. I well remember that the last thrashing I had from my father he gave me because he had seen me in a shop in Napier with my hat on. " So you want to be an Englander, do you ? Well, I'll give you a last lesson in Danish manners first." And he did—to such good purpose that, to this day, fifty years after, I seldom enter a shop where women are employed without removing my hat.

If Jorgensen has dined with Rasmussen, next time they meet, be it in the street or in a tram-car, his greeting must be " Tak for sidst " (" Thanks for last "), and Rasmussen's answer, " Selv tak " (" Be thanked yourself ").

These little courtesies are not confined to any particular class of society, nor, from whatever class they proceed, is there ever the least taint of servility

or obsequiousness about them. A Copenhagen tram-guard—a very paragon of good manners—hands you your change with "Vaer saa god" ("Be so good"); and when he has received your thanks, if there be not too many passengers and he has time for a gossip, he will inquire as like as not if you were at the revival last night of Ibsen's "Doll's House" or Sudermann's "Magda," as the case may be, and then engage you in critical discussion on the relative merits of the Norwegian and the German playwright. Nor would it ever occur to his passenger, if a Dane, to snub him.

If you wish to see Copenhagen at its best and brightest, visit the famous Tivoli Gardens on a summer evening; listen to one of the concerts—opera, chamber-music, or choral singing; if you so prefer, watch a ballet or a pantomime or—in these degenerate days—a cinema; order a plate of Tivoli's famous "smörre-bröd" and a "Karlsberg"—a pint of the delectable Copenhagen lager. But don't try to pronounce "smörre-bröd" or even to translate it; above all, don't call it "sandwiches," for that were rank blasphemy. Then sit and watch the crowd—the best-humoured, best-mannered, best-fed crowd in Europe. Each has paid the same price to come in—50 ore (about 6*d.*)—and each is, or feels, as good as the next, or better. On one memorable occasion—was it the silver or the golden wedding of Christian IX?—when half the world's Royalties were in Copenhagen, it is said that on one and the same evening there were three visiting European sovereigns strolling unaccompanied in the grounds of Tivoli, and each of them had paid his sixpence to come in, and each

of them no doubt was, or thought himself, as good as the next, or better.

But when I refer to a Copenhagen crowd as the "best-fed" in Europe, I must in honesty make a reservation. Danish cookery is, indeed, superlatively good; but it is not well to make a temple of the kitchen and a god of the chef. One grows tired of the everlasting chatter about food and drink, drink and food. Petersen meets his friend Rasmussen in a tram-car: "I was dining at Sörensen's last night"—so goes the well-known "dinner opening" to the conversational game. Rasmussen's "move" is almost mechanical: "What did you have?" and the game is fairly started. In set routine Petersen enumerates the courses, and Rasmussen inquires eagerly, "How was it cooked? how served?" Does Petersen think Sörensen could be persuaded to impart the secret of that sauce piquante?[1] I blame my countrymen

[1] There is a great paucity of surnames in Danish: Hansen, Jensen, Petersen, Sörensen, Jorgensen, Rasmussen—all ending in "sen"—are the commonest. This arose, no doubt, from the custom, in vogue for centuries, of taking as surname the baptismal name of the father with the suffix "sen" (son), or "datter" (daughter). Thus the children of "Peter Hansen" would become Jens Petersen, or Marie Petersdatter. Again, the son of Jens Petersen would be Sören Jensen, his son Rasmus Sörensen, and so on. This system—a gold-mine, no doubt, to real-estate lawyers—was fortunately abolished by statute more than a century ago. In the seventies of last century some 5,000 Scandinavian immigrants, about half of them Danes, were settled in the Seventy-mile Bush in Hawke's Bay. The names of "Dannevirke" and "Norsewood" remain to remind us of the nationality of their original settlers. Their English neighbours found the paucity of surnames so confusing that a custom grew up of prefixing "eke-names" indicating their

less for eating too much than for talking too much about what they eat.

When a fire breaks out in a Danish parsonage it is not the family silver, pictures, and heirlooms that are thought of first. The vicar himself rushes to his study to secure the manuscripts of his old sermons, his wife to the kitchen to retrieve her book of recipes.

trade or calling. In general conversation, as well as in the storekeepers' ledgers, the foreign settlers became "Smith Olsen," "Painter Hansen," "Carpenter Jensen," and so on.

Chapter III

HOW I LEARNED ENGLISH

THE *Friedeburg* arrived in the roadstead north of Napier on August 24th, 1875, and next day the passengers went ashore in lighters and were landed at " The Spit." Such was the name by which the Port of Napier was at that time known, from the long shingle " spit " connecting the town with the harbour. " Napier " and " Spit "—so the town and port were always spoken of till 1892 or 1893. Since then, if you would avoid giving offence, you must say " Napier " and " Port." For in that year Mark Twain published a professedly humorous account of his tour in New Zealand. I have never seen the book, but I am assured it contained at least one joke, emphasised for Napier people, no doubt, by its " splendid isolation " : " See Naples, and die " ; " See Napier, and Spit."

We had been 108 days at sea in a sailing vessel without fresh vegetables or fruit of any sort ; our tea and coffee (beverages that were really indistinguishable) flavoured with a mud-coloured powder supposed to be sugar and with Swiss condensed milk ; the only meat, a canned mess obviously from Chicago.

It is easy therefore to imagine the joy in the family when, a few days after our arrival, we were

all four asked to dinner by a kind-hearted clergyman. I am ashamed to say I have forgotten his name, nor do I know even to what religious denomination he belonged ; but with a typical Danish memory I remember the food ! Not one of us could speak a word of English, but what of that ? We were there to eat—fresh, wholesome, palatable food—not to talk. With " nods and becks and wreathed smiles " we had no difficulty in conveying to our hosts our appreciation of the meal provided : " Viands of higher regale than those cates which the ravens ministered to the Tishbite." And we enjoyed our good things for the same reason that little " Elia " so enjoyed his : we too had lived on " blue and tasteless porritch," on " scanty mutton crags," and on " boiled beef—strong as *caro equina*."

But the dinner nearly ended in a *contretemps*. When we rose from the table, first my father and my mother, after them my sister and I, went up to our host and hostess, according to Danish usage, politely shook hands and said " Tak for mad," expecting them to reply with the English equivalent for " Velbekommen "—whatever that might be. Our host and his wife shook hands with us pleasantly enough, but seemed embarrassed, and were apparently protesting about something or other. Presently we found ourselves in the hall of the parsonage, and hats and coats were handed us, still apparently with protests. " Strange people these Englanders," we thought ; " when you've had enough to eat they turn you out." Then it dawned on my father that something must be wrong somewhere. He fumbled in his overcoat and produced his *Vademecum*—his

" Handbook of English and German Phrases." We could never procure a Danish-English lexicon in New Zealand, but he fortunately spoke German, and translating from Danish to German and then, with the aid of his " Handbook " from German to English, he managed to explain that " Tak for mad " meant " Thank you for food," and the formula expected in response—" Velbekommen "—meant " May it agree with you." And so the incident ended in laughter ; our hats and coats were restored to the pegs, and in the drawing-room we spent a pleasant evening with music and with singing in both languages. But what an escape !

Those " nuggets of rich red gold " the emigration agents in Copenhagen had described so eloquently appeared to be scarce after all. In fact, in Napier —and indeed in the whole Province of Hawke's Bay—as we now were told, there were none about. " Over the Range," however, beyond the forest-clad Ruahine Mountains, there, we were now assured, was El Dorado. So my father, reluctantly no doubt, abandoned the romantic quest for gold and sought more prosaic methods of employment.

We had secured some partly furnished rooms in a house belonging to a stout lady with a Bardolph nose. As she was the first English person with whom we were brought much into contact, we hoped to learn from her something of the language. When she was shown some of our Danish treasures she would say, " Well, I never ! " If still more moved to surprise or admiration she would exclaim, " Goodness, gracious me ! " Now, what could we benighted foreigners make of that ? Such phrases were simply untranslatable ; even my father's

vaunted " Handbook "—much in demand since it had extricated us from that mix-up at the parsonage —furnished no key to such mysterious idioms, and from our landlady, for all her volubility, we learned nothing.

On the voyage out my father had applied himself assiduously to learning cases of nouns and pronouns, comparison of adjectives and paradigms of verbs. He filled pages of paper with incontrovertible statements like " The schoolmaster has the pen of the baker's mother-in-law " ; or with profound moral reflections like " A stitch in time saves nine " ; but when he tried to put all this to use in speech the result was quite hopeless. The curse of Ollendorf was upon him, and to the end of his days he never acquired facility in speaking English.

But he wisely determined that I must follow a different course. I was young enough, he thought, to learn my English as I had learned my Danish—by Nature's method, not by Ollendorf's. Neither on the voyage out nor during my first three months in New Zealand would he allow me to look at an English grammar or an English lesson-book of any kind. I must first, he insisted, " pick up " the vernacular as best I could. And so, wisely as I now realise, he simply " turned me loose " to mingle with English boys and acquire their speech.

We lived on the edge of a common or open space called " Clive Square," where boys were always to be found at play. Shyly and timidly I tried to make up to them, but with small success, for their language, their manners, and their games were alike strange to me. Then luck came my way : a

nice-looking young butcher,[1] who sold us meat from the tail of his cart whenever we could afford to buy it, took a fancy to me. He found me, I hope, a polite little boy. At any rate, he gave me a lamb some three months old, and this I grazed on a tether-rope in Clive Square.[2]

At once I appeared to become an object of interest to my fellow-urchins ; they gathered round me and my lamb and were no longer unapproachable. For some reason that remained for long a mystery to me they called me " Mary." But they spoke to me and humoured me, and soon I learned that my lamb had " eyes " and " ears," " nose " and " mouth," " legs " and " tail " ; that its coat was composed of " wool " ; that it " walked " and " ran " ; that it " ate grass," and even that it " baa-ed." In a few days I came home in

[1] Fifty years later I part heard a case in the Supreme Court at Napier—a family dispute about the administration of a sheep-farmer's estate of some £50,000—the deceased testator was my " nice-looking young butcher." I felt he had thoroughly deserved all the prosperity that had come to him.

[2] The Province of Hawke's Bay and its chief town, Napier, are fortunate in the matter of place- and street-names. Clive, Hastings, Havelock, Meeanee—these are names of towns and villages in the district. The streets of Napier were laid out and named after English poets and writers by Alfred Domett, himself a poet (" Ranolf and Amohia "), the friend of Tennyson and Browning, the " Waring " of Browning's poem of that name. Other parts of New Zealand have been less fortunate. The desire to commemorate the names of local nobodies or of enterprising speculators who subdivided their lands and founded " townships " gave rise to such names as " Dillmans-town " and " Horrelville," and many beautiful and significant Maori names have been thus effaced. " Kororareka "—" the beach of shining shells "—has become Russel ; for " Waiheke " —" Tumbling Waters "—is substituted the atrocity " Bulls."

triumph to fire off at my parents my first complete sentence in English : " Dat lamb haf ver-r-i fine vool." I have not forgotten that sentence—I was not allowed to forget it, or the way I pronounced it. Four years later, when I was a pupil-teacher in the Napier State School, some of these same urchins were in the class I taught, and when I " kept them in " or otherwise punished them, I would hear them, at a safe distance in the playground, calling not to me but at me, " Dat lamb haf ver-r-i fine vool ! " But on the whole I thought I had the best of it ; they at least could not keep me in.

In the course of two or three months I had acquired a work-a-day vocabulary, illiterate and slangy no doubt, and hopelessly mispronounced ; but it served. Then, and not till then, my father sent me to a small private school. The first morning I learnt the alphabet : " y " and " w " were the only letters that puzzled me. Next day the mistress put into my hand a book and said, " See what you can make of that." It opened at a picture—Foot-prints on the sand. It was " Robinson Crusoe," the great Danish classic translated into English ! I had read it and re-read it in Denmark. It ranked with Ingemann's " Valdemar the Victorious " as my favourite story-book. Knowing the narrative almost by heart, I found reading it in English wonderfully easy. I was allowed to take the book home, devoured its pages at night, and when in a difficulty I turned up the passage or sentence in my own Danish version. In less than a month I could do a piece of dictation from any part of the book, and had added most of the

words in it to my fast-growing vocabulary. It was only after several years—and I may add, after several fights—that I was reluctantly convinced that the book I had so long treasured and brought out with me from home was a translation into Danish of the great English classic, and not the reverse.

But " Robinson Crusoe " was not my only classic. My father had been told that the Authorized Version of the Bible was the finest exemplar of English prose. So he sent me to Sunday school as well as to day school. The nearest to our home was in Clive Square, so there I went. It happened, I remember, to be a Wesleyan Methodist. I managed to win a prize for recitation of the Psalms of David, for I had then, as now, a retentive memory. The prize, " Pompeii and Herculaneum," has escaped several sales of my library in recurring periods of impecuniosity, and is still in a place of honour on my book-shelves for my children to see. But my father presently decided to change my Sunday school ; he was not satisfied, he said, about what he quaintly called " the Wesleyan accent." He therefore sent me to St. Paul's (Presbyterian), for the Scotch, he understood, were the best educated nation in Europe—after the Danes. But they did not give prizes at St. Paul's, only " merit cards," and I soon persuaded him to let me change once more. This time I went to St. John's (Anglican) Sunday school, and there I had the good fortune to be taught by the daughter of the Bishop of Waiapu, of which diocese Napier was the cathedral town, though as yet without a cathedral. When she read Isaiah to us in her cultured voice, even I could realise that here was noble English prose.

I fear that my father, in his anxiety about my accent, showed very little concern about my theology. But I have never ceased to be grateful to him for his wise foresight, for during the years I attended these Sunday schools—especially St. John's—I read nearly half of the Old Testament and most of the New. I committed to memory much of Isaiah and many of the Psalms, and I learned to read aloud and to recite—thanks to the teaching of that cultivated English gentlewoman—with, I believe, "good accent and discretion."

I have allowed myself to dwell at such length upon the manner in which I acquired my second mother-tongue in the hope that among my readers a teacher of languages here or there may learn something from my tale. At any rate, the method was justified by the result. My friends assure me I have no trace of foreign accent, and that I could pass for an Englishman in Oxford itself. Although of late the number of words at my command in Danish has been reduced from lack of use, I was for many years *stricto sensu* bi-lingual in that I spoke and thought, interchangeably, in either tongue. That is a result that would never have been attained had I acquired my English by the stupid and unscientific methods in which French and other modern languages are still taught in our public schools.

I suppose it is not possible at sixty to form a just conception of your mental stature at ten. All I can say for certain is that I had in a marked degree a receptive mind, and with that went, as usual, a retentive memory. Some little imagination had, I think, developed, but no trace of any sense of humour; that did not show itself till I was on

the verge of manhood. For, had it done so, I should surely have escaped the conceit and cocksureness of my adolescent years.

But I do realise that the complete change of environment and of language at that stage in my growth had a most stimulating effect upon my intellectual development. I had been at school for a year and a half in Copenhagen; top boy—"dux" it was called—in the preparatory department of Kelskov's "Real Skole," a proprietary school on much the same lines as the Scotch academies. I had visited most of the museums and art galleries in that city of galleries and museums. I had been several times to Tivoli and to theatres. All these experiences of the years between six and nine would have been forgotten long since, as they are by most children, but that the sudden and complete change in my life had the effect, in the language of photography, of "fixing" the impressions made during my childhood in Denmark. Those impressions in consequence became a most useful element in my education and mental "make-up." I have, for example, seen many plays in my life, but of none have I so clear and vivid a recollection as of my first play, which I saw at eight. This was "Kjöbmanden fra Venedig" ("The Merchant of Venice") produced at the State Theatre in Copenhagen. Shylock's is, of course, the image most clearly outlined; indeed, I remember I was not a little afraid of him, with his scales and his knife and his looks of hatred. But I have the most vivid recollection also of the fairy splendours of the fifth act, its music and moonlight. Perhaps I enjoyed it the more because I was assured

at the end of the fourth that the cruel old Jew was not coming back.

It is worth noting, by the way, that for many years plays of Shakespeare were produced on more nights of the year in Copenhagen with its half-million inhabitants than in London itself. "As You Like It," "A Midsummer-Night's Dream," "The Merchant of Venice," and, of course, "Hamlet," were the favourites with Danish playgoers. Even while I am writing this chapter I learn from a Copenhagen newspaper—*Dammarks Posten*—that "Stormen" ("The Tempest") is having a great run at the State Theatre in Copenhagen, produced, say the critics, with consummate art by Johannes Poulsen. It would seem that the Danish stage still deserves what Sir Edmund Gosse said of it many years ago—that it is the home of the highest dramatic art in Europe.

In the meanwhile the family fortunes remained at a low ebb. The mercantile experience my father had acquired in Copenhagen was of no use whatever in view of his unfortunate failure to become fluent in English speech. Nor was he adapted for the career marked out for his fellow-immigrants—bush-felling, and ultimately, when the land was cleared, dairy-farming.

The few pounds brought out with him were all spent and the situation looked desperate indeed; and then luck turned for the time being, at any rate, and he got his first job in New Zealand.

In his youth he had taken up painting as a hobby, and attended "Balsgaard's," a well-known art school in Copenhagen. On the voyage out, in calm weather, he would bring out his easel and

palette and amuse himself by painting bits of " still life " on the deck or try his hand at a seascape.

One evening—I think my mother was down to our last shilling—there came to us two young Danes whose acquaintance we made on board. They were with difficulty persuaded to sit. When they did, they sat on the very edge of the chair, twirling their caps in nervous fingers. At last Jensen cleared his throat and became articulate. They were deeply sorry that the " well-honoured and highly-respected Herr " (" Politeness," says a Danish proverb, " costs nothing ") had not yet obtained employment suitable to his distinguished talents. The " well-honoured Herr," in reply, cheerfully assured them, Micawber-like, that something would surely turn up. They had observed, they said, the beautiful paintings he had done on the voyage. " And," said Jensen, and looked at Hansen : " Yes, indeed," said Hansen, and looked at Jensen—but they got no further. " Have these good fellows developed taste in art ? " thought my father. " Can it be that they want to buy one of my—er—masterpieces ? " But he was quite wrong, for presently they blurted out the real object of their visit. They had rented a shop in a side-street and partitioned it off into two. In one half Jensen, who was a watchmaker, proposed to repair time-pieces ; in the other Hansen, a bootmaker, to mend footwear. " Did the worthy Herr think he could, and would he so far condescend as to honour them " —and then it came out simultaneously from both in a sort of duet—" Would he," in short, " paint a signboard for each ? " And so the reason for all their shyness became apparent : they were

ashamed only to be kind! My father, touched by the now transparent motive of their visit, gladly assented to their proposal. If he could paint at all, he thought a signboard should not be beyond his powers.

Jensen was the easier to please. "Rasmus Jensen, Watchmaker" was all he wanted. But Hansen must have something more than "Boot-maker." There were some words, he said—always the same words—at the bottom of every shoemaker's signboard. So I was sent off to the nearest shoemaker's shop to make a "Chinese copy" of the customary legend, whatever it might be. In due course the words, were painted on Hansen's sign. None of us was sure of their exact meaning, but they sounded really fine: "Repairs Executed with Neatness and Despatch."

My father was well paid, probably over-paid, for his signboards, and got other jobs on the strength of this. It is pleasant to know that both these kind-hearted young Danes did well in their business. Hansen gathered together a modest competency and returned to Denmark; Jensen established a large watchmaker and jeweller's business and left an estate of close upon £30,000, and, better than that, a name much honoured in the community. As for my father, when he died suddenly in 1893, after a hard struggle with life in which he seemed always worsted, but in which he never lost heart, I found that all he owed in the world was the sum of seventeen shillings and sixpence; and I paid that.

Chapter IV

SCHOOL DAYS

THERE were two good secondary schools in Napier, but the fees at these were quite beyond our slender means, and I had to be content with one of the denominational Board Schools at a shilling per week. The pupils were exceptionally lucky if they got their shilling's worth. The masters were generally what were called " remittance men," usually well-educated, sometimes public-school men, but scallywags of sorts packed off to the Colonies by their family with a small monthly allowance—enough perhaps to satisfy their hunger, but very far from adequate to appease their thirst.

The master of the school I was enrolled at was, fortunately, better than most of his kind. It is true he was often drunk—very drunk indeed ; but he was, as I have since come to realise, drunk or sober, a gentleman. In my very first week at his school we became fast friends. He left his " rostrum " one afternoon to go to the blackboard. He appeared to me to be ill, and presently he lurched forward and fell. Alarmed, I rushed to his assistance, thinking he had taken a fit. The other boys called to me, " Let him be—leave him alone." It was usual, it appeared, on such occasions to let him " sleep it off," while the boys, according to taste,

played " noughts and crosses," read " Deadwood Dick " romances, or engaged in competitions to see who could stick most darts into the school-room ceiling. I was, I suppose, what they would call a " softy," for I ignored their protests, helped the poor man back to his seat, and got him a glass of water. In this strange way man and boy became devoted friends.

He used to give me special tuition in his favourite subjects. Had his tastes been literary, this would have been invaluable ; but unluckily for me he was a mathematician of the deepest dye. Todhunter's Euclid, Hamblin Smith's Arithmetic, and Colenso's Algebra—these represented for him the acme of intellectual achievement. Out of pure loyalty and affection I devoted myself to these sterile and distasteful studies. Boy-like, I took the shortest cut and learned the propositions of Euclid by heart, as being so much quicker with my memory than troubling to understand them. But soon came detection, for one morning when he called me up to hear my " proposition " for the day and pencilled on his blotting-pad the two triangles whose " sides were equal to each other, each to each " (I still remember the abracadabra), he took it into his head to call them, not " the triangle A B C and the triangle D E F," as in Todhunter's text, but O P Q and X Y Z respectively. I floundered hopelessly in my parrot-like recitation, and of course he guessed the reason. I was thoroughly ashamed of myself and thereafter turned honest. I thought out my propositions as I learned them, and was quite restored to his good graces a few weeks later when I managed, unaided, to solve one of his pet riders.

It was little enough to do to humour so kind a friend, for I was not devoid of brains, and if I had been, well, any second-rater can do mathematics in its lower branches if he applies himself, for it is independent alike of taste, imagination, or humour. My own brain, it is true, has always been obstinately impervious to the attractions of the binomial theorem ; even the minor blandishments of recurring decimals and simple equations have left me cold. That no doubt may prejudice my view ; yet I cannot but think that in the next generation mathematics will rank among the things that are " simply not done " by cultivated people : we shall by that time have invented such perfect machines for doing it instead.

At the end of the year my friend " crashed." He had been living, it seemed, far beyond his income, and with his pleasant manners he had found no difficulty in obtaining credit. Generous before he was just, at the end of the school year he distributed a number of beautiful prizes—his own gift. Mine, I remember, was Kingston's " In Eastern Seas : or the Voyage of the *Dugong*." After that he was made bankrupt.

A particularly malicious boy, who hated him and was jealous of me, insisted on reading out to me the newspaper report of the creditors' meeting and the many hard things said thereat about my friend. As the list of creditors included a firm of local booksellers with a claim for " school prizes supplied," my tormentor suggested that in common honesty I should hand my prize back to the booksellers as it had not been paid for. But I shrewdly reflected that the words " For General Diligence,"

which, together with my name, were written across the fly-leaf in the fine Roman hand of my beloved master, made the book unsaleable, and I kept it.

As for my friend, how dear he was to me I only realised when trouble overtook him. He disappeared from Napier, and the announcement of "a first and final dividend of ninepence in the £" in his bankruptcy was the last that was heard of him. But one young boy paid him the tribute of bitter tears o' nights for many a sad week after he had gone.

His successor was a hard-featured, red-headed Scotchman—for a wonder, not a mathematician—who did me one good service. He admired Macaulay, only, I suspect, because he was a contributor to the *Edinburgh Review*, and he set me to learn by heart "The Lays of Ancient Rome." If only he had mentioned "Ivanhoe" or "Rob Roy" to me he would have opened the gates of Romance; but unhappily several more years were to pass before I even heard the name of Scott. His hobby was "experimental science," and I was set to learn experimental science, but without experiments. We used Macmillan's Science Primers, Roscoe's Chemistry, Geikie's Geology, and What's-his-name's Physics. I learnt by rote elementary chemistry, without ever handling a test-tube; the story of the rocks without ever seeing a geologist's hammer. As for physics, all I remember of that is the name of one piece of apparatus described in the book and called "Wollaston's Cryopharus," and I only remember that because it rhymed with "Tricopherus," at that time a popular and much advertised hair-wash.

The only science that ever appealed to me—unless a complete course of Jules Verne could be called science—was astronomy, and that was due to the happy circumstance that Proctor, an English astronomer, and a most inspiring popular lecturer, visited Napier some time in the early eighties and delivered a series of four lectures—"The Life of a Planet," "The Moon," "Jupiter," and "Mars." I attended them all, and thereafter read every book on astronomy I could lay hands on. But while this science appealed to my imagination, it also disturbed my beliefs; and I entered upon some trying years of futile mental conflict in which I sought to reconcile "The Life of a Planet" with the first Book of Genesis.

I suppose my schoolmasters thought me clever, for I remember the other boys in the classes were always three or four years older than I was. My masters were probably deceived by my extraordinary receptivity; I sucked in knowledge like a sponge sucking up water, and gave it out again in class or examination-room in the same mechanical way, when duly squeezed.

In the year 1876 the Parliament of New Zealand passed an Education Act and established in the Colony a national system of "free, compulsory, and secular education." One must approve the "free" and "compulsory" even while deploring the "secular." Bible-teaching was relegated to the Sunday schools, and it is to be feared that many children grow up in ignorance of some of the noblest things in all literature—to put the matter on no higher plane. But anything was preferable to the chaos hitherto existing, in which learning

was sacrificed to sectarian bigotry and every little Bethel insisted upon conducting its own school in which to promulgate its own peculiar tenets. New school buildings, well lighted and ventilated, sprang up all over the Colony; the "remittance men" gradually disappeared, and trained teachers, many of them imported from England under engagement to the new Education Boards, took their place. Teaching was organised and systematised, and if it became a little mechanical under a too rigid syllabus for the various standards, it was at least efficient out of all comparison with what it had been.

The newly-built "District School" at Napier, as schools under the Act were called—was opened on February 1st, 1879, and I was there bright and early on the first morning. Now at last I was going to school in earnest to learn, not at haphazard but under service conditions, subject to strict discipline and with the zest of competition. I remember what a joy to me were those new sunny rooms with their interesting teaching apparatus and accessories, terrestrial globes and orreries, clean new wall-maps, and fascinating diagrams to illustrate industries and manufacturing processes. By October of 1879 I had run through the "standards" and had passed through the highest class in the school. Then, at twelve years and a half, I was faced with stern reality: I must begin to earn money—my own keep, at any rate—and trust to night schools or self-education for the rest.

It was my good fortune at this time to find two new friends who interested themselves in my education—the headmaster of the school, Archibald Bruce Thomson, and the Secretary and Inspector

to the Board of Education of the Province, Henry Hill. The Education Act made provision for the appointment and training of what were called "pupil-teachers"—juniors who taught in the schools and were themselves taught. Their term of apprenticeship was four years; the salary commenced at £20 for the first year and rose by annual increases to £50 in the fourth year. Here was my chance of obtaining a further four years' education, and that, too, under a headmaster who, I still think, was the most naturally gifted teacher I have ever known. At the same time I should be earning what in those days was a substantial wage for a boy of my years.

Very opportunely a vacancy occurred; but it was then discovered that the Act laid it down as a hard-and-fast rule that candidates for appointment must be not less than fourteen years of age, and I was only twelve and a half. But I was tall and looked much more than fourteen. My birth certificate was conveniently mislaid, and my two good friends unblushingly broke the law. Thus, at the age of twelve years and seven months I became a full-fledged pupil-teacher duly appointed to the staff of the Napier District School. I entered upon my duties with, I fancy, a pretty conceit of myself and in no danger of under-estimating my own importance.

So far my reading had been confined almost exclusively to lesson-books and text-books—the books which are not books—*biblia abiblia* of Elia's aversion. Now at length I began to read books that were literature.

Almost the only verse I had read so far was the wretched stuff which was then, and I fear still is,

to be found in school readers—" Casabianca," " The Psalm of Life," " Bingen on the Rhine," or the thin drivel of pietistic poetasters like " A.L.O.E." Why such anæmic twaddle should be served up to children passes comprehension—healthy, normal, high-spirited youngsters, who loathe every poem or tale that has a moral to it, and for whom nothing, not Shelley's " Skylark " even, is ever too good! Thrice blessed are the children of this generation who have Stevenson's " Garden of Verses " to read, or A. A. Milne's " When we were very Young."

But presently I purchased " Dick's Shilling Shakespeare "—a kingdom for twelve pence—and found therein and promptly committed to memory " Full fathom five thy father lies," and " When icicles hang by the wall."

I read and re-read the Comedies ; but it was the lyrics which at that period made the strongest appeal. And then one day soon after—a never-to-be-forgotten day—a gifted and discerning friend made me a present of Francis Palgrave's priceless anthology—his " Golden Treasury " of lyrical poetry—and I too stood

Silent, upon a peak in Darien.

At the end of the second year of my apprenticeship, when the results of the annual examinations appeared in the newspapers, I received through my friend, the Inspector of Schools, a most kind letter from a complete stranger congratulating me on my success, enclosing an order for several guineas on a local bookseller, and hoping I should " choose wisely." He proved to be the Rev. Wm. Colenso, cousin of " Pentateuch " Colenso, Bishop of Natal,

the well-known writer of books on mathematics and famous—or must I say notorious—for his daring flights in theological controversy.

The Napier Colenso had lived for many years in retirement, devoting himself to botanical researches. Occasionally, too, like his more famous cousin, he made excursions into the stormy regions of Higher Criticism. For a time he was, in consequence, out of favour with his Bishop and the authorities of his Church. But shortly before his death, when he was an old and venerable-looking man, I heard him preach in the Napier Cathedral. On a tablet to his memory it is recorded of him that he printed on a hand-press brought out with him from Home the first translation into the Maori language of a portion of the New Testament. And so, at the end, there was peace.

When I called upon him to thank him for his gift he talked to me for a long time about his difficulties and struggles as our pioneer printer. He had much trouble to conceal from his Maori converts the lead he had brought out to the Mission for casting into type wherewith to print the gospel of peace; the Maoris used to steal it and melt it into rifle-bullets! He recalled also, I remember, that he had spent Christmas Day, 1842, with the great Charles Darwin on board the *Beagle* in the Bay of Islands. This, he said, started him on what he regarded as his life's work—the classification of New Zealand ferns.

I spent nearly half of his gift on Macaulay's "History of England." To this day it remains unread, and all but the first fifty pages are uncut. Had I known it I could have purchased for much less money Greene's "Shorter History." I should

then have possessed a picturesque and entrancing history of the English people instead of a learned but prolix Whig pamphlet. But in the selection of the rest of my gift I was more fortunate : Macaulay's " Essays," Proctor's " Poetry of the Stars," and Winwood Reade's " Martyrdom of Man."

This last book was chosen on the recommendation of a new friend—the Gamaliel of the moment—upon whom my ardent hero-worship became at this time centred. He was a cynical and witty journalist. He had been educated at Merchant Taylors' School, and was a man of culture and taste ; but he was what would now, I suppose, be called an agnostic, though perhaps his rationalism was of too militant a type to be adequately described by that colourless term. Indeed, so violent was he at times in his iconoclastic fervour that one is tempted to compare him with the rabid secularist who began a speech with, " Thank God—I am an Atheist."

At any rate, he deemed it his duty to educate his protégé in " free thought." He prescribed for my perusal what he called " the most emancipative chapters " in Gibbon's " Decline and Fall," and he urged me to procure " The Martyrdom of Man." In truth, after the " sturm und drang " period since Proctor's lectures first moved me to doubt, the " Martyrdom of Man " acted rather as a pleasant sedative.

But militant free-thought has long since ceased to be the vogue ; Charles Bradlaugh and Robert Ingersoll are alike forgotten, and we have learned to regard each other's differences of view in a spirit of Christian charity, with, however, a twinge of misgiving, now and then, lest that fine old word

" tolerance " should be subtly degenerating, as the best of words will degenerate, into a euphemism for " indifference."

We, all of us, agree with Tennyson's :

> There lives more faith in honest doubt,
> Believe me, than in half the creeds.

But Samuel Butler's whimsically wicked misquotation of the lines will persist in obtruding itself also.

If my new friend's philosophy had a disturbing influence, after all it merely accelerated a stage in my development which I had to go through, I suppose, sooner or later. But that was by no means the only direction in which he stimulated my mental growth.

He was a constant playgoer ; and as his " Press " ticket admitted two, he frequently took me to the theatre with him. Even in those early days of the Colony's history many really excellent theatrical companies visited us from Australia and sometimes even from Home. It was with him, for example, that I went to my first grand opera, " Un Ballo in Maschera," sung in Italian by the " Martin Simonsen Opera Company," and to my first Savoy opera, " Pinafore." In the course of two or three years he was actually able to take me to three different performances of " Hamlet." He made a point of never missing a " Hamlet "—good, bad, or indifferent ; and for forty years I have adopted and followed his rule with interesting results.

The first of my " Hamlets " was Herr Bandmann, a ponderous German actor who gave what was called a " scholarly performance " in a vile German accent. Miss Louise Pomeroy played the part of

the Prince in corsets, and spoke her lines in a deep contralto voice which did not, however, avail to disguise her sex. The third was an American, whose name for the moment I forget. He "explained himself" with much unction to the newspaper interviewers. He was, he said, a realist and a stickler for the authorised text and for the literal as against a fanciful interpretation of it. He played Hamlet in a tow-coloured wig, because all Danes were supposed to be fair! He also wore a beard; for how else, he said, could Hamlet exclaim:

> Who calls me villain? breaks my pate across?
> Plucks off my beard, and blows it in my face?

Some day, no doubt, we shall have an American actor, product of a Chicago Shakespeare Society, who will act Hamlet as an Irishman with a Tipperary brogue; for does he not in one scene swear, and that most valiantly, by St. Patrick?

But the best service my friend did me was to insist, when I was about sixteen, that I should "take stock" of myself and my attainments. I flattered myself that I was becoming "educated," a belief encouraged, no doubt, by a certain fatal facility I possessed in doing the superficial cram-work which enables you to score marks in examinations.

He set himself ruthlessly to destroy my self-complacency. A smattering of science and mathematics—"arithmetic enough for a grocer's clerk" was his comment; a string of dates and events in history, of capes and bays, towns and exports in geography—"an auctioneer's catalogue of useless lumber—without reserve." Parsing and analysis,

rules for composition, "figures of speech"—all according to "Bain's Rhetoric"—the true "curse of Scotland" he dared to call the work of that thrice-learned pundit.

What was his remedy? Latin and Greek, if possible—if not, at least Latin and French. Not Latin accidence and French grammar merely, but the literature, history, and philosophy of the two peoples. This was the one and only sovereign remedy: so only could my mind be cultivated. His unobtrusive scholarship and unaffected culture made me realise my own barrenness and poverty. At all costs I must, however hard the struggle, get to a town where I could attend university classes.

I was now nearly sixteen and had entered upon the last year of my apprenticeship. I had good prospects of being awarded a bursary at the end of my course to enable me to proceed to the Teachers' Training College at Christchurch in the South Island. There, too, I could attend the classes at Canterbury University College. But the bursary was only £50 a year for two years, and it was clear I could not pay for board, clothes, and books out of that.

So I set about making money. My friend's caustic allusion to the "grocer's clerk" supplied one hint. I procured a copy of Chambers' "Lessons in Book-keeping" and read it up. Soon I obtained three jobs at book-keeping, in the sense of posting day-book into ledger and making out the monthly bills. My employers were a draper, a baker, and a butcher. The draper had a comfortable little office, and the baker's books were written up amid the warm and pleasant odours of his bakehouse;

but the butcher's were kept on a desk in his shop, where in winter I suffered from cold and in summer from smells and fly-pests. These jobs kept me busy three long evenings in every week and brought me in close on £50 for the year. But it was hard work; I never knew what it meant to be in bed on the last night of any month. All three employers insisted that their monthly bills must be made out and posted in time for the mail delivery on the first, and I was fortunate if my night's work was finished by breakfast time.

But this was not my only or my most profitable "side-line." Just before my sixteenth birthday I inserted an advertisement in the newspaper announcing that

"Mr. O. T. J. Alpers" (that was me, if you please!) "proposes to start a night-school for working-men, if sufficient inducement offers."

I had not ventured to mention this project to my cynical friend for fear he should scare me out of it. As it was, when he saw my advertisement he described it, not altogether incorrectly perhaps, as "a piece of blazing effrontery"; but he conceded, sensibly enough, that as I had publicly committed myself to this "asinine project" I might as well see what came of it.

In the upshot, success came of it. It is true I was only a boy of sixteen, but that fact was not paraded in the advertisement. I had acquired, no doubt, some little reputation in the town—a small community, remember, in which everyone knew something of everyone else—and was spoken of variously as "a clever young fellow," "a bit of a crank," "with lots of cheek"; and it was rumoured,

not, I hope, without some justification, that I had the knack of teaching. At any rate, rather more than the "sufficient inducement" offered; I had, in fact, close upon forty pupils in the course of the year. Some stayed a few weeks only—others stuck it out. They paid me a fee of two shillings per week—cash on Friday nights—and in the year I made nearly £70 out of my school.

I should perhaps explain here that this shrewdness in money matters, so marked in my seventeenth year as to suggest the possession of a promising acquisitive instinct and future triumphs in finance, came, alas! to naught. It may be that when I began at last to pursue the "humanities" I acquired also—or affected—the scholar's contempt for that which is dross.

They were a fine lot of men, all sorts. One was actually the father of two children at the District School who had been my pupils. "You taught the kids something, so what about their dad?—" and, half in jest, half in earnest, he joined up. But most of them were young men who felt they had left school too early and wanted "rubbing up" in some particular subject.

Some little time before I had received, as a special prize, Cassell's "Popular Educator" in four well-filled volumes. It was a sort of "Inquire within upon everything." It had well-arranged lessons upon every conceivable subject, and I had obtained direct from the publishers a key or book of answers to the exercises. With this compendium of information in my possession I was thrice-armed. One young fellow wanted to learn Navigation for some reason. Navigation, I ex-

plained, was an extra ; so he paid the " extra " and was taught navigation. It was all there, with diagrams, in my wonderful " Popular Educator." Another desired to be taught what, in those days, was still called " Polite letter-writing " (I rather suspected he was in love !). That subject had been omitted from my all-comprising encyclopædia, but was fortunately well within my own powers to teach.

But my boldest stroke of business was done with a young fellow, a printer, I remember, on the staff of one of the newspapers. He had a pleasant tenor voice and had been called upon to sing, on occasions, the anthem in St. John's. This was his undoing. Abetted by his admiring relations, he conceived himself to be a Sims Reeves, and nothing but the Leipzig Conservatorium was good enough for him. Would I teach him German ?

Now, I did not know one word of German ; but I at once realised it was high time I did. The pronunciation of that harsh language was not altogether strange to me ; I had heard the sailors on the good ship *Friedeburg* singing German " shanties " in the fo'c'sle. My father, too, would sometimes try to sing—he really had no ear—" Ach, dy lieber Augustin." He, I reflected, would certainly help me with the difficult gutturals. My printer was willing to pay double rates—four shillings a week. I had a key to the exercises, and, what was much more important, he had not, so why hesitate ? I did the first six exercises of Cassell's " Lessons in German " before commencing to teach him, and throughout the year I kept my lead. At the end of it he knew quite a good bit of German, and I knew more—six exercises more, to be exact. He

ultimately got to Leipzig; but I am afraid the *virtuosi* were less enthusiastic about his voice than his relations in New Zealand had been, for in a few years he was back in the printing office "on case." I heard that when the linotype machine was introduced some years later he took to the new invention with special enthusiasm. I suppose the keyboard appealed to his musical instincts.

But, fortunately, I did not have many of these "extra" pupils, or I might have been found out; though I always protest that those I did have got their honest money's worth. Most of my scholars, however, wanted nothing more difficult than lessons in two of the "three R's"—usually writing and arithmetic, with a little of "Mavor's Spelling Book" thrown in.

When, more than thirty years later, I made my debut—if the metaphor be not too flippant—on the Bench at Napier, the gentlemen of the Grand Jury very courteously craved leave to address me, and in the course of some very kind and gracious words of welcome to me as an "old Napier boy," the foreman told me that he and three other "gentlemen of the County" had been my pupils at the Napier District School.

I subsequently learnt that one member at least of my first Petty Jury had actually attended my night-school. The dramatic proprieties demand here that this should have been my "German" student; but thank heaven it wasn't. Had I recognised him in the jury seats I should have blushed to the roots of my Judge's wig.

Chapter V

COLLEGE DAYS

AT the conclusion of my pupil-teacher course my long-cherished ambition was attained. In virtue of my successes at the annual examinations I was awarded a bursary of £50 a year for two years, and proceeded to Christchurch, there to acquire the art and science of education at the Teachers' Training College.

The conditions of my bursary required me to attend about twenty hours a week at the Training College and four or five at the School of Art. Most of this time I regarded as wasted, my one aim being to attend the university classes; but the problem was how to get out of it. As regards the School of Art, the difficulty was soon solved, for half-way through the first term I was expelled for "insubordinate conduct."

At the Training College the difficulty was all but solved in a similar manner, for there too I was sentenced to expulsion; but as this meant the forfeiture of my bursary and the end of my ambitions, I made my submission, apologised as gracefully as I could, and was, after some trouble, reinstated. But the School of Art I got out of for good and all, and that institution saw me no more. Lest I produce the impression of being incorrigible, let

me hasten to explain that my offence was nothing more serious than publicly lampooning the ogre who taught mathematics—" mathemawtics," he called it. He was an utterly stupid man, and he was frequently tipsy even on duty. He richly deserved all the contempt that could be poured upon him. On the other hand I equally deserved the sentence of expulsion, not for the insult conveyed by the lampoon, but for its poor wit.

After a time, in spite of my indiscretions, I won my way into the good graces of the authorities, and was exempted from all attendances at the Training College except an hour a day for practical teaching. This set me free for university work.

The University of New Zealand is merely an examining body. Under Royal Charter it grants degrees in a number of faculties, theology always excepted. In my day, and for many years thereafter, all examinations were conducted by examiners resident in the United Kingdom—a system, it was felt, that enhanced the value of degrees granted by a young University in a far-distant Colony. But occasionally it led to inconvenience and delay, or worse. One year when I had sat for a law examination and my papers were on their way to Oxford to be examined by Professor Hunter, the well-known writer on Roman Law, the mail-steamer *Mataura* was wrecked in the Straits of Magellan, and the collective wisdom of some three hundred New Zealand students went to the bottom of the ocean, there, no doubt, to " suffer a sea-change into something rich and strange."

Affiliated to the University are four Colleges, one

each in Dunedin, Christchurch, Wellington, and Auckland, where the subjects in which the University grants degrees are taught by staffs of Professors, all of whom in those days were also drawn from the Universities of the United Kingdom.

During my first year in Christchurch I attended several classes at the College as an "extra-mural" student—in other words, as one who was, and felt he was, a rank outsider; but having matriculated with the aid of a first-class "coach," I entered in the following year as a full-fledged undergraduate. The College was then entering upon the second decade of its history. Two buildings had been erected, one containing lecture-rooms, the other a noble hall. It was characteristic of the pioneers of learning in Canterbury that thus early in the history of the College they built a hall. Chemical and physical laboratories and additional lecture-rooms were urgently needed. But the Governors, many of them English public-school men, and several of them graduates of English Universities, had ideals that soared beyond the mere utilities of the moment. Only thirty years had passed since the "Canterbury Pilgrims" had founded the settlement which they hoped to make, in the fine phrase of the *Times*, "a slice of England out and out from top to bottom." A university college, with a hall not unworthy of English traditions, and with beautiful buildings grouped round a "quad"—this they deemed a necessary part of the "slice." To-day the College has its "quad" with noble and dignified buildings in grey stone, and cloisters and arcades surrounding it, waiting only for the mellowing effects of Time and ivy to complete their beauty. In my

day only two sides of the College site had any buildings erected on them ; but a " quad " it would one day be, and " quad " it was to us and so was called by us in affectionate anticipation of the future.

I suppose our efforts, mere handful of graduates and undergraduates as we were, to create a university atmosphere were rather absurd ; but we at least were deeply in earnest about it all. In brand-new mortar-boards and brand-new gowns we sat in lecture-rooms that still smelt of paint and flattered ourselves we were already creating traditions in a College that was founded yesterday in a city built the day before. We had our Virgilian motto to live up to, " *Ergo tua rura manebunt*," and the good broad acres of endowments to which it referred to justify great hopes for its future. We had already formed a union—the " Dialectic Society," we called it ; we had our boating on the waters of the Avon, classic-named ; there were shady walks among the willows on its banks where we sauntered two and two, while we lovingly coloured our meerschaum pipes, and dreamed our dreams, and talked of Cicero " On Friendship." We even had our " Jowett breakfasts " on Sundays at the hospitable board of John Macmillan Brown, Professor of Languages and History, and some time of Balliol College, Oxford.

Of him, by the way, many good stories were current, most of them relating to the varied methods he employed to " scarify," as he called it, an idle student. One only I recall : There was in his elementary Latin class a student with a ruddy complexion and a huge nose of a most bibulous strawberry appearance. He was called on to trans-

late into Latin a passage beginning " He marched his army into Gaul." Unprepared as usual, he began, with short-lived confidence : " He, hic," and paused thoughtfully. " Hic "—and he scratched his head. " Hic " once more, and then from the Professor in his most dulcet tones, " Mr. ——, am I to take that as a pronoun or an interjection ? " But the innuendo was undeserved : the unfortunate man was an incorrigible teetotaller.

Life as an undergraduate was much more interesting and varied than life as a pupil-teacher had been, but it was not less strenuous. After my bursary ran out I was once more thrown upon my own resources. In vacation I got jobs as " relieving teacher " in Board schools. In term-time I made carbon copies of my notes of lectures and sold these to extra-murals in the country whom I " coached " by correspondence. When I had established myself somewhat by successes in the College examinations, I started night-classes in Latin, a little better equipped for the responsibility, I hope, than in my night-school days in Napier. Occasionally in the long vacation one was so lucky as to get an engagement as " bear-leader " to sons of the wealthy lower orders, of whom there were already many in our young community.

I had the very great pleasure on one occasion of punishing a " profiteer," though that felicitous term had not then been invented. He wanted to send his son to Oxford, of all places, and to that end wished him to matriculate in New Zealand first. So he took him away from school a month before the date of the examination and engaged me to " cram " him, after the manner of a Strasburg

goose. I forget how many hours I was to devote to the process during the month, but I remember that my fee "scaled out" at ten guineas, and that was the sum I had made up my mind to charge. The day before I was to begin the course the father sent for me. He kept a racing stable and wanted, I suppose, to give me his final "riding orders," much as he did to his trainers and jockeys, and much in the same tone. He informed me, quite unnecessarily, that he had not been to Oxford himself; he had "made his pile" without the help from any "College fal-lals"; he didn't "hold much with these notions"; but his wife thought "Oxford would give the boy tone." Women were like that. He had heard I was very successful in "schooling youngsters over the hurdles," and was prepared to "come down handsome" if I succeeded with his boy. I explained, coldly, that my fees were quite independent of results. "Well, I look to you to do your best, young feller; and, anyhow, what *is* your fee?" The "young feller" very nearly terminated the interview; I was on the point of telling him to go to ——, but remembered in time that I was in his own house, that after all it was the son, not the father, I was employed to "cram," and—well, I could do with the money. I had a brilliant inspiration: "Thirty guineas," I rapped out, and so fined the purse-proud vulgarian twenty guineas for his insolent manners. The son did get to Oxford somehow, but was sent down at the end of his first year for "drink and complications."

In one of my jobs as "relieving teacher" I had a piece of good luck. I had been engaged to take charge of the District School at a town in the

Seventy-mile Bush for a period of six weeks while the master was on sick-leave. I was paid £5 a week, but as I had to pay £2 a week for board at the local hotel there was not a great deal in it. After the first week measles broke out, and the school was closed. I drew my £5 a week for the rest of the term of my employment while living at home with my people and reading hard for the John Tinline Scholarship in English Literature, which I was so fortunate as to win. I was by this time earning such good money as a tutor that I was able to devote the whole proceeds of the scholarship to paying the deposit on a cottage I bought for my parents on the instalment plan and to pay off the balance in the two following years.

Life at College meant much hard work and very little play for most of us ; but on Saturday nights we relaxed—usually at the " Will o' the Wisp," an undergraduates' club, where we drank small-beer and smoked meerschaum pipes. We rented a room from a popular tailor in the town, and he used to call in person on club evenings to collect his rent. He had an excellent basso voice, and we always insisted on his singing us a song by way of " discount " for prompt payment of our rent. It was either " Will o' the Wisp," in honour of the name of our Club, or " The Yeoman's Wedding." Whatever it was, it was always vociferously encored ; and by this means we made our way into—and on to—the tailor's good books, and remained " on them," some of us, for an unconscionable time. But I don't think he lost money by any of us in the long run.

If I can claim to have contributed in any way to

the creation of that university atmosphere we were all striving for, it was on the social side, and particularly in connection with fostering university theatricals.

Already in my first extra-mural year some enthusiasts produced on a miniature stage Goldsmith's comedy "She Stoops to Conquer." I witnessed that performance, and for me at least the glamour of that night will never fade. A boy of seventeen, not yet matriculated, until that night my one ambition had been to become that exalted being, a Bachelor of Arts. Henceforth such pedantries seemed of secondary importance. In my day-dreams gown and trencher yielded place to sock and buskin; I too would be a College amateur and strut it behind the footlights, with the limelight turned full on.

My opportunity soon came. In my freshman's year I made my debut on the stage of the College Hall in some scenes from Fielding's "Mock Doctor," in a female part. For twenty years the lure of the footlights held me till I made my final bow—"positively his last appearance"—in Hare's rôle of Sir Peter Lund in "A Fool's Paradise."

From then on I took the initiative in producing at least one play a year. I am much afraid that in my vanity the play was frequently selected less for its general suitability than for the fact that it contained a part I particularly wanted to act. On this principle, for example, I produced Sheridan's "Rivals" because I saw "fat" for myself in the part of Bob Acres. In my zeal for realism I so bedaubed myself with white grease-paint in the

duel scene, to indicate the fear I was not artist enough to portray without it, that when I fainted in the arms of Sir Lucius O'Trigger I left a white profile clearly outlined on the breast of his black velvet coat as an indelible proof of my emotion. The laughter of the audience, rising from a simmer to a roar as they gradually saw what had happened, did not add to the histrionic triumph I had hoped to achieve.

The following year we produced a novel experiment in comedy, "Aristophanes Up-to-date," or "The New Learning," a clever adaptation in English of Aristophanes' "Clouds." The book was the work of the Professor of Classics, F. W. Haslam, a scholar and a wit. He had been at one time a master at Westward Ho! School, where he had Rudyard Kipling among his pupils, and he was supposed to have been the original of King, the classical master in "Stalky & Co." The satire of the Greek comedy was cleverly diverted into modern channels and directed with much point upon latter-day foibles.

In my final year our soaring ambition o'erleapt itself. We had the temerity to produce Shakespeare; and that, not on the modest stage of the College Hall, but at the leading theatre in the town. And Shakespeare, as so often, spelt ruin from the financial point of view. The main part of the "bill" consisted in the Malvolio scenes from "Twelfth Night." As lovers of that delightful comedy have no doubt noted, it is possible to present the Malvolio–Olivia plot severed from the Viola–Orsino plot as an independent play. The adaptation of the text was the work of H. F. Haast,

and his acting and singing in the part of Feste was the outstanding success of the production.

It was Charles Lamb's essay "On Some of the Old Actors" that fired me with the ambition to play Malvolio. My performance was at least an honest attempt to carry out Bensley's conception of the part as described in the essay: to avoid presenting him as either buffoon or contemptible in the accepted tradition of the modern stage, and to keep before my mind throughout Elia's description of him: "He becomes comic by accident. He is cold, austere, repelling; but dignified, consistent, and, for what appears, rather of an over-stretched morality. . . . His bearing is lofty, a little above his station, but probably not much above his deserts. . . . He looked, spoke, and moved like an old Castilian."

It has always seemed to me that among all the Shakespeare commentators I have ever read, from Gervinus, the worst, to George Brandes, the best of them, there is nowhere to be found a more just and discriminating description of any of Shakespeare's characters than is here contained.

How far achievement must have fallen short of ambition in thus producing Shakespeare's light-hearted comedy! One blushes in the dark when he recalls the temerity of youth; but we all thought the attempt worth while, and in the audience, I do not doubt, were many who would much rather see university students fail lamentably in "Hamlet" than succeed hilariously in "Hot Codlins."

The house was packed; but we had spent half as much again on scenery and accessories as we could possibly take at the doors; and as the stage-struck enthusiasts who had promoted the perfor-

mance were personally responsible for the deficit, we sadly determined for the future to leave the field of legitimate drama for others to cultivate.

Apart from the plays mentioned, I played at various times a number of other parts: Prosper Couramont in Sardou's three-act comedy "A Scrap of Paper"; Pygmalion in W. S. Gilbert's "Pygmalion and Galatea"; Henry Spreadbrow in the same author's "Sweethearts"; Sir Harcourt Courtley in "London Assurance"; and Sir Peter Lund, as already stated, in "A Fool's Paradise."

Whatever the audience "in front" thought of my "Malvolio," an incident occurred at the final rehearsal which won me the admiration of the audience "behind," the most critical of all critics—the stage hands. For amateurs, as a rule, stage hands have only unmitigated contempt. The most uninspiring "blue chin," because he is a "pro," far surpasses, in their opinion, the most gifted of amateurs. But of me two of them at least made an exception. In the course of the last act, where Malvolio, behind the bars of his prison, protests his sanity to Sir Topas and the Fool—an exceedingly trying scene to play—Alf, the chief scene-shifter, and George, the limelight operator, were holding loud-voiced converse in the wings behind me. My protests were unheeded; the more peremptory my demands for silence the louder grew their voices; so I decided to address them in their own language. Looking carefully round to see that no one else was within earshot, at a pause in the action when I was "off" for a moment, I bade them shut their "blank, double-dash, asterisk, morse-code mouths," or I would "blank, more dash, three asterisks,

shut them for them." Dumbfounded and, I think, not a little envious of my vocabulary—for I had once spent a vacation in a mining-camp on the West Coast—they spoke not another word. After the performance I overheard them through the half-open door of my dressing-room—the " star " dressing-room, you may be sure :

" Wot d'yer think of that chap Allpeers, Alf ? " asked George.

" Think of 'im ! " answered Alf. " My cripes ! 'E's no blitherin' hamatoor : 'e's a b——y hactor ! "

And I never met either of them after that, whether on the stage or off, but he doffed his cap to me. Had I been Henry Irving himself, they could not have treated me with greater deference.

But the real business of life at Canterbury College was work—earnest, strenuous, sustained work. It was no place for sons of the idle rich—if indeed any New Zealanders at that time merited the description—or for their daughters either, for that matter ; for, be it remembered, the University of New Zealand was the first within the British Empire to confer degrees upon women. Every student was there for the specific purpose of qualifying in some profession or other, and to that end of obtaining a degree.

For myself I took the arts course and read for honours in the " Languages and Literature " group (Latin and English, including Anglo-Saxon and Old English). As I had only attained fluency in English speech a few years before, and as my Latin, when I came up, was in a parlous state, my choice of subjects for Honours was regarded by my friends as foolhardy. But mathematics or science was out

of the question for me, and philosophy and economics did not interest me ; I therefore had really no choice. To our cynical and sarcastic Professor of Classics it was an unspeakable crime for a student who had matriculated at seventeen by the skin of his teeth to attempt to get a first-class in Latin at twenty-one, and if he succeeded in the attempt so much greater the crime. But I am glad to think that he ultimately forgave me, even though I committed the major offence. I realise that to a man of his fastidious scholarship, the solecisms and false quantities of my first, and even of my second, year must have been offensive to his very soul. But once a student " caught his eye " he spared no pains to lick him into some semblance of polished scholarship. The love for the best things in the literature of Rome, the lyrics of Catullus, for example the appreciation of literary values which he sought to impart—this is a treasure some of us at least would not exchange for all the lore of all the pundits of all the sciences put together.[1]

As for the Professor of English, J. M. Brown (now Chancellor of the New Zealand University), he it was who more than any other shaped and moulded the activities of the College in its first years. He systematised the teaching of English, and made it the most popular subject in the whole

[1] An interesting tribute to the soundness of the classical side at Canterbury College is the fact that at one time both the Professor of Classics at the University of Leeds (Professor Benjamin Connal) and his assistant (Professor Leo Greenwood) were graduates of Canterbury College, while at the time of writing this note the present incumbent of the Chair at Christchurch (Professor Hugh Stewart) has accepted appointment as Professor of Latin in the same University.

curriculum. He will always be remembered as the true founder and " father " of Canterbury College.

The only criticism to which the methods of instruction in vogue in our day were open is one that would probably apply with equal force to most university teaching at that period. With true academic conservatism modern professors still followed mediæval monks—the learned friars who " lectured " at the Universities of Oxford and Paris in days when printed books were not, and the spoken word was the only way of transmitting learning. Much, too, of the teaching was second-hand. We were set to study " books about books " that often left us no time to read the books themselves. English classics—the plays of Shakespeare, Spenser's " Faerie Queene," even Burke's " Reflections on the French Revolution "—we read in " Clarendon Press " editions, one part text and two parts annotation. I remember once getting top marks in a paper on the second book of the " Faerie Queene." I simply had to get top marks because a £20 " exhibition " depended on it. I sat up the whole of the night before the examination cramming up the notes and glossary. I am ashamed to say that to this day I have never found either time or inclination to read the text, and I am still entirely ignorant of the adventures of Sir Guyon ; but after all, that was not the fault of the system, but my own fault for so grossly abusing it.

As for our Latin authors, there it was not much better. We did indeed have to read the text in order to be able to translate it—though I read my Tacitus, I remember, with the aid of Bohn's crib. By the time we had finished a passage, its beauty

and significance were often buried in our brains beneath an undigested mass of "annotated" lumber. Conington's "Notes" to the Æneid, Wilkins and Palmer's "Notes" to Horace's "Epistles and Satires," made exacting demands upon our time and sent us to bed in the small hours of the morning, our heads reeling with textual and grammatical comments, till we dreamed—in the witty words of one of my fellow-students—that we were walking down the Appian Way arm-in-arm, not with Horace and Virgil, but with *Ut* and the Subjunctive!

Some day, perhaps, all "annotated editions" will be placed on the Index Expurgatorius and sternly banished from the Halls of Learning.

The great name of Bohn—beneficent friend of hard-driven youth—reminds me that we had a debate once at the "Will o' the Wisp" Club on the engrossing topic of "Bohn's Translations versus Bass's Beer." I spoke, I remember, on the winning side, in favour of Bohn's Translations, for "cribs" were a clandestine necessity we could not do without, while beer was a glorious luxury we could seldom afford.

The reference above to "Clarendon Press" editions reminds me of an extraordinary coincidence I experienced some years ago. I am fully aware that of all bores the worst is he who persists in recounting his wonderful experiences of what he calls in good newspaperese "the long arm of coincidence." But this one was really so remarkable that the reader, I hope, will bear with the telling, or, if not—well, one merit of this kind of book is that you can so easily "skip."

In 1889 I sold in a Christchurch auction-room two sacks full of old books, mostly textbooks. They included a copy of Shakespeare's "King Lear," edited by Clark and Wright and published in the familiar brown cardboard edition of the Clarendon Press. I received, I remember, £5 for the contents of the two sacks.

A quarter of a century later I was established in Christchurch as a barrister and solicitor. In the building adjoining the offices I occupied a teacher of singing and elocution, Mr. Farquhar Young, had his studio. So close a neighbour was he that, truth to say, my clerks occasionally found his stentorian bass distracting. He happened to be on a visit to London when the Great War broke out, and came back early in the following year. On his return he called on me and informed me he had brought me a present from London. As we were not in the habit of exchanging presents, I suppose I looked surprised. "You need not be embarrassed," said my friend; "I only paid ninepence for it," and thereupon he handed me my "King Lear." He had seen it on the stall of a second-hand book-dealer somewhere in London marked "9*d*.," and bought it. When he got home to his lodgings he found written across the fly-leaf "O. T. J. Alpers, Canterbury College, 1887." Below that is now also written this account of the book's travels and how after twenty-five years it came back into my possession.

What are the odds against such a happening? I leave the answer to any mathematician gifted with imagination.

I was able to complete my course at the College

largely owing to the kindness of Professor J. M. Brown in recommending pupils to me and procuring me vacation jobs. At its conclusion he appointed me his assistant, and for three years I helped him in the work of his chair. In the course of the third year he left on a visit to England and I became his *locum tenens*—or, as a sarcastic undergraduate described me in one of the " Diploma Day Songs," for the year :

> Professor Embryonic
> Of wisdom most Platonic.

That was an *annus mirabilis* in the history of the College, not, be it understood, because of my temporary tenancy of the Chair of English, but because of the interesting group of men who attended the English classes. They included half a dozen law students, all of whom have made their mark at the Bar, and one of whom is the present Attorney-General for the Dominion, the Hon. F. J. Rolleston ; a group of " medicals " who later won distinction in London and Edinburgh ; and Sir Apirana Turupu Ngata, afterwards Minister for Native Affairs, the first member of the Maori race to take a University degree. They included also Mrs. W. P. Reeves, a leader in that little group of intellectual women who conferred distinction upon the " Women's Movement " in the early days of our University life, and whose own literary achievements are not to be forgotten merely because her husband is the author of the best book so far written about New Zealand by a New Zealander. These alone would have made any year a good year. But besides these there were two men whom the

College still proudly regards as its most distinguished graduates. One was Sir William Marris, Governor of the United Provinces in India. When the following year he "topped" the Indian Civil Service Examination by a lead of nearly a thousand marks—a feat till then at least unprecedented—and when some years later he published his translations into graceful verse of the Odes of Horace and the lyrics of Catullus, I basked mildly in his reflected glory.

The other was Sir Ernest Rutherford, O.M., some time President of the Royal Society, and at present in charge of the famous Cavendish Laboratory at Cambridge, the most distinguished scientist of the day. On his recent visit to New Zealand I told him I proposed to have inscribed on my tombstone the simple legend: "Among his pupils were Sir Ernest Rutherford and Sir William Marris." But he was so ungracious as to remind me that I had not taught him science. Yet in the days of my night-school in Napier I think I would not have hesitated to attempt it; and in any case I would have him know that in my freshman's year at Canterbury College I sat for Honours in Physics, and the Professor awarded me Third Class for the best of all reasons—there was no Fourth.

Chapter VI

TEACHING

SCHOOLMASTERS are a disconsidered class, and they are seldom allowed to forget it. Perhaps it is because people will persist in associating their calling with the corporal chastisement of small boys, as though this were their main business. That, at least, seems to be the reason why they cut such a sorry figure in literature. From the *plagosus Orbilius* of Horace to the heavy-handed James Boyer of Charles Lamb—with his *rabidus furor* and his " sublunary infirmities "—the schoolmaster is always depicted wielding a birch.

And yet at one time more than half of the occupants of the Bench of Bishops in England had been headmasters of public schools; but even this recognition of their fitness to become Peers Spiritual has failed to procure for the profession the consideration due to it. Perhaps the best explanation of the anomaly is that suggested by Ian Hay in the dedication of his delightful book " The Lighter Side of School Life " to " the most responsible, the least advertised, the worst paid, and the most richly rewarded profession in the world."

But although the rewards are rich indeed, they are not completely adequate compensation for the underpayment. It is true that in this country

clergymen are now paid even less, but they have at least the consolation of feeling that theirs is not a profession, but a vocation; and—well, they *are* occasionally invited to the garden parties of the rich.

But men do not as a rule become schoolmasters because they feel a "call" to teach; they do not adopt the profession—they drift into it. Of all the young men I helped to educate at school or University, I know of three only who deliberately made up their minds to be schoolmasters, and of these one is now a doctor, and one a stock-broker; the third alone has remained true to the faith that was in him.

The typical schoolmaster—and I have known many—is a man who at twenty or twenty-one finds himself the proud possessor of a diploma on parchment adorned with the seal of a University and the signature of its august chancellor. This entitles him to stick several letters at the back of his name in addition to those in front, but no prudent pawnbroker will advance him the price of a meal on it. His head is filled with learning, but his pockets are empty of money. His ambition is to become a doctor or a lawyer or an engineer, but lack of means makes these professions for the time inaccessible; so he accepts a job on the staff of a secondary school as a stop-gap, and there stops. After his strenuous years at the University he "slacks," becomes "groovy," acquires the habit of leaning on that monthly cheque like a drunken man lurching from one lamp-post to the next. He finds his work in school absorbs all his energies; he discovers, if he has a gift for teaching, that "boy"—even "perpetual boy"—is not at all unpleasant material to

work upon, and that after all those three vacations in the year are, one must admit, a joyous time to look forward to. He has not abandoned those other ambitions of his ; he still vows he will set about attaining them—next year. And so he passes out of the twenties into the thirties, and out of the thirties into the forties, and wakes one morning with a shock to find it is his birthday once again, and that middle-age is stalking him with unrelenting steps.

That, or something very like it, was my own case. Shortly after taking my degree I was offered and accepted a position on the staff of the Christchurch Boys' High School, and there I remained for fifteen years. Many reasons moved me to stay : my keen enjoyment of the work itself, my attachment to the headmaster—wisest, kindest, and most lovable of men—and, I suppose, sheer inertia. My salary when I joined was adequate and even tempting to a young man of twenty-two ; but it had only been increased by £50 when I retired at thirty-eight. Two of my contemporaries at College, one of whom had taken to medicine and the other to law, were, as I found, paying considerably more in income-tax than I was receiving in salary, and this gave me furiously to think.

I could not possibly have remained in the profession as long as I did were it not that by leader writing for newspapers, by occasional contributions to London magazines, and by perpetrating a book or two (in one [1] of which, however, I had an accomplice) I contrived to add substantially to the emolu-

[1] " New Zealand in the Nineteenth Century," by R. F. Irvine and O. T. J. Alpers. (Linscott Publishing Co., Philadelphia ; W. & R. Chambers, Edinburgh. 1901.)

ments of teaching. That I was forced at last to leave the profession was not due to any loss of interest in it, for the longer I stuck to it the more I came to love the work. My reasons for leaving it were, I am afraid, frankly sordid ; I was driven out by my tailor and my shoemaker, who insisted, not unreasonably, on having their bills paid. Could I have brought myself to wear " hand-me-down " suits and " slip-on " boots I might have remained a schoolmaster, and that perhaps was a sacrifice I ought to have made in so good a cause. But there never was anything really heroic in my moral make-up.

This iniquitous and short-sighted underpayment of schoolmasters which prevailed in New Zealand twenty years ago was a bad tradition bequeathed to the Colony as a legacy from its founders, for in " The Handbook for New Zealand," published in London in 1848, appears this minute from the records of the Canterbury Association :

THE Association, considering the large surface over which the population will be distributed, calculates that twenty clergymen and as many schoolmasters will not be more than will be requisite to maintain that high religious and educational character which the Association hopes, with the Divine blessing, that the settlement will possess.

The following will be an approximate estimate of their cost :

	£
To a Bishop	1,000
To an Archdeacon	600
To twenty Clergymen at £200 each . .	4,000
To twenty Schoolmasters at £70 each . .	1,400

Also :	£
Twenty parsonages and glebes at £500 .	10,000
Twenty schools at £100 each	2,000

Truly a priceless document ; a halfpenny worth of bread to an intolerable deal of sack. And yet those pious founders were quite sincere about the high ideals on which they invoked the Divine blessing with such naïveté, even though, like many of us, they were not prepared to pay for their realisation. They set aside large areas of land as endowments for religious and educational purposes, and they had not been a year in the new settlement before they made a beginning with one of their most dearly cherished projects—the establishment of Christ's College Grammar School. The cost of the original building in which a handful of boys assembled in 1851—the year after the arrival of the historical " first four ships "—cannot have exceeded by much the modest estimate of " schools at £100 each." But as the first headmaster was a clergyman as well as a schoolmaster, one may hope he was placed in the £200 category and was not one of the " job line " of 70-pounder pedagogues. From these small beginnings, in the course of seventy-five years, Christ's College has developed into a school that is justly ranked among the great public schools of the Empire.

Schoolmasters work in fetters. If they had their boys only to consider, all would be well with masters and boys alike. But boys unfortunately have parents ; behind the parents are Trustees and Governors ; and behind these, least enlightened and most tyrannical of all, is public opinion. This is apt to express itself in slogans and catch-words :

utility, efficiency, specialisation—these are the worst. The control of education in an ultra-democratic country such as this is largely in the hands of successful men of the self-made type—farmers, merchants, manufacturers—men who have " made their pile," and are proud of it, without the help of a college education. They want to know " what's the use " of Latin and Greek, and even " what's the good " of Euclid and Algebra? In their philosophy the schoolboy is merely a labour unit in embryo, his progress down the years measured in money-earning capacity, his mental and moral worth calculated in " industrial co-efficients " to three places of decimals. Their ideal of education is expressed in the demand that small boys in smock-frocks shall be taught agricultural chemistry because their mothers think it would be so nice to make them farmers.

It might have been supposed that the Headmaster[1] under whom I served, with his love for the classics and his Oxford training, would have been conservative in his methods and ideas; in fact, he was the most open-minded and receptive of men. He had, too, that greatest of gifts in a headmaster—he trusted his staff and left them, if he thought them competent, a free hand. We had, of course, to adapt our work to some extent to the vicious examination system; but if he was personally satisfied that our work was sound, he cared little what marks or reports we got from outside examiners.

It was my ill-luck for several years to have the work of my sixth form English " passed upon " by

[1] C. E. Bevan-Brown, M.A., Lincoln College, Oxford; at one time a master on the staff of the Manchester Grammar School.

a professor in one of the Colleges affiliated to the New Zealand University. He was an Aberdonian and had been nurtured on " the curse of Scotland " —Bain's Rhetoric. He would select a passage from Milton or Shakespeare and ask the boys to parse it and analyse it and even to paraphrase it—to convert immortal blank-verse into workaday prose ! He had as little reverence for the holy places as Wordsworth's scientist who went botanising on his mother's grave.

Usually a Shakespeare play would form part of the year's work—" Macbeth " was a favourite choice. The boys and I would read it together, discuss it together, allot each other parts, and act scenes from it. The least intelligent enjoyed it as a melodrama, as indeed it is—one of the finest ; others could appreciate its characterisation and dramatic art ; a few at least would understand its inner significance. And then, at the end of the year, this Aberdonian pedant would ask them to " Name and define the figures of speech in the following passages," or to " Write out ten peculiar idioms " (I am sure he pronounced it ee-dioms) " from ' Macbeth.' " I did get the Headmaster one year to protest against this particularly stupid form of question ; but the examiner replied in all seriousness that he thought it a very easy question indeed because the boys could learn the answer in a quarter of an hour from Dr. Abbott's Shakespearean Grammar ! Of course the learned professor sent in year after year most damning reports on the work of the form. If he had praised my work, I should have thought it time to resign.

The same gentleman was also examiner in English

History. That meant to him, apparently, a list of kings and dynasties, and a string of events and dates. He had obviously never read the Paston Letters or the Creevey Papers, and yet he professed to know all about the periods of history to which that illuminating correspondence and those priceless memoirs relate. One year, I remember, he quoted in his report, as a particularly shocking example of the work sent in, an answer by a boy in the sixth to a question about " The Character of Henry VIII " :

THIS King is often held up to scorn as a very wicked man because he had six wives. But one should always remember that he had them in succession, and was scrupulously careful to get rid of one, by divorce or decapitation, before he married another. In this he was at least superior to the Georges, who often had six at a time.

Alas ! the flippancy, I fear, was mine ; but fortunately only one boy in the form repeated it. Had several done so, the shocked examiner must have detected its source and " dealt it out " to me in no measured terms.

But every schoolmaster could write a volume on the sins of examiners, so I forbear. A very wise headmaster told me once that when he had to interview a candidate for appointment to his staff the first question he always asked himself was : " Has this man a sense of humour ? " It is a great pity that the same test is not applied on the appointment of examiners.

It is certainly the all-important qualification for a master. You cannot, it is true, impart a sense of humour to boys ; but you can cultivate it if you

possess it yourself. Without it your work is the veriest drudgery ; with it you may teach for years and remain young. For no man will ever understand or sympathise with boy-mind and boy-character unless he has the happy gift of remaining boy himself. The saddest part of the whole business is that so many schoolmasters are middle-aged at thirty and senile at forty-five.

If one may judge from the anecdotes " old boys " are fond of recalling when we meet, they, at any rate, seem to think that I myself had, when a schoolmaster, " the happy gift of remaining boy." I am not quite sure, indeed, when I listen to some of the rather thin " jokelets " they relate in affectionate reminiscence, whether I was merely " boyish " in my demeanour or whether I was not occasionally puerile. Odd trifles remain in a boy's memory sometimes when much of the learned lumber of the class-room has passed into oblivion. Recently, for example, an " old boy " named Sterling, who had just been appointed to a very responsible post in the Public Service in the Dominion, reminded me that when he first came to school some thirty years before his inseparable chum was a boy who had for his initials the letters " L. S. D." I at once insisted that there must have been some mistake ; the two friends must somehow have got their initials " mixed up " ; and so " L. S. D. Sterling " was promptly entered on my mark-books and form-lists and remained there till the poor joke grew stale.

Some time ago I presided over a Compensation Court, sitting with two assessors. One of them was an " old boy," and he told me this story : When he was in the fifth form I had occasion several

weeks running to " rag " him for failing to do his " home-work " on Friday nights. He finally gave the reason: he played the organ in his parish church, and Friday was the night of the weekly choir practice. Pleased apparently to find so young a boy a competent musician, I at once promised him that so long as he continued to play the organ in his church I would let him off Friday " prep." " My people," he said, " were rather opposed to my playing because it might interfere with my school-work; but your encouragement settled it, and I have been playing the same organ in the same church ever since—for thirty-five years."

Many hundred boys must have passed through my class during the fifteen years I was engaged in teaching; but I don't think a single one of them left school with a grudge against me. That is not to say I did not make many mistakes, or that I was not sometimes guilty of injustice. I attribute it rather to a fortunate frankness in acknowledging a blunder, and an impulsive readiness to atone for an injustice. Also, perhaps, it is due to the fact that quite early in my career I abandoned the use of corporal punishment. I was not so unwise as to announce a " change of policy " or to adopt " moral suasion " as a profession of faith; to the last I always had a hefty cane lying conspicuous on my desk as a reminder that " I could an' I would." But a very few years' experience as a schoolmaster forced the conclusion upon me that if you are gifted by nature with the power of discipline, corporal punishment is unnecessary; and if you are not, it is dangerous.

I well remember the circumstances of my last

" administration." I was engaged in giving " three of the best " to a perversely attractive and particularly incorrigible small boy when the Headmaster happened to come into the room. Later in the day we met by chance ; looking at me, not through, but over his spectacles, he said :

" I saw you caning H—— H—— this morning—' dusting his jacket,' I think you call it. Was that his first ? "

" His very first," I said.

" Please don't think I want to interfere with your discretion ; but do you realise that you were also—er —*dusting the bloom off the peach* ? "

I realised, as always, how right he was, and " dusted " no more jackets.

That was many years ago, but it left me with a deeply rooted objection to corporal punishment. Since I have been a judge I have once or twice wondered, when passing sentence for certain abominable crimes, whether my duty to the public did not demand that I should order one or more floggings in addition to a term of imprisonment. So far I have been able to avoid it ; I sincerely hope circumstances will never arise that may compel me to do it, for it is so debasing, not to the man who receives the flogging, but to the unfortunate gaol-official who is called upon to administer it.

I hope I have not allowed myself in this chapter to dwell too much on the difficulties and hardships of the profession and to overlook its rewards. For, in my case, I found them rich indeed. During the twenty years I practised as a barrister in Christchurch a great number of my rivals—and those among the most formidable—were " old boys." They were

my juniors in age, but many of them my seniors in "call," for the profession they had entered in the early twenties I did not adopt till I was nearly forty. It often happened that of a dozen barristers seated round the counsel table all but one or two would be old pupils. The affection I had felt for them in their boyhood they repaid me in ample measure in my middle age. And though, as lawyers do, we strove mightily, we had, they will all agree, as jolly times together in Court as ever we had in the class-room. I could no longer silence their opposition with a peremptory "Sit down, Gresson Minor," or a stern "Donnelly Major, take an hour's detention." And as for "bend over"—well, I flatly refuse to remember that I ever subjected any of my colleagues at the Bar to this indignity when they were at school. But I shrewdly suspect that in conceding me the position of their leader, as they most generously did, they had regard less to my prowess in the Courts than to kind recollections of my comportment in the rostrum.

It was the Great War that, for all its sorrow, brought to me, as to most schoolmasters, the deepest realisation that ours is, after all, the most richly rewarded profession in the world. Those letters headed "Somewhere in France" from boys who had left school, perhaps a dozen years before, and yet remembered an old master and wrote to him the night before they went "over the top," are a very precious possession. While the war was still in progress I was asked by the Headmaster to contribute to the School Magazine some reminiscences of "old boys" among the fallen who had been at school in the days when I was master there. That

article, now when I re-read it, seems to describe much better than anything I could write to-day what I felt for the old school in which I had spent so many years of my life. It conveys, too, though incidentally, much better than mere generalisations can convey, my views, for what they are worth, on the attitude of a master to his boys and to his work. For those reasons, in spite of the intimate and personal character of the article, I venture to reproduce it here. It was published in the *Christchurch Boys' High School Magazine* for November 1917, under the title—

Some Memories

Before me, as I write, lies an old photograph taken some twenty odd years ago by a camera enthusiast of the Lower III. I sit in the midst—a slim young man of something under thirty, with my mortarboard cocked jauntily over the left eye : around me fourteen boys, also of the Lower III. (Why is it that all the jolliest chaps are always in the Lower III ?) At any rate, they were jolly for the moment, for we were all—master and boys alike—bunking a Latin lesson for the more congenial occupation of being photographed down there, in the corner of the playground behind " Jackson's room."

Of those fourteen, two died in boyhood ; of the remaining twelve, ten are or have been serving. Great as is the record of the School for service, no form, I venture to say, before or since could beat this. There in the back row stands Gordon Harper ; in front, seated, his brother Robin, both in the blue-striped blouse of innocence. On my right sits " Ru " Garsia, looking in his white turndown collar as cherubic as any choirboy. He retained the cherubic look even when a middy on H.M.S. *Russell*—I have his photo of that period ;

but he had lost it when he came round in H.M.S. *New Zealand*—Lieutenant-Commander, no less, and very much a man of the world, but with most of the old charm left. He it was who accepted the surrender of von Müller's sword on board the *Emden*, with, I doubt not, the same fine Spanish courtesy (his father was a Spaniard) that Richard Grenville met on the decks of the *Revenge*.

Oliver is not in the photo ; his last letter to me, written the night before he set out from Curragh Camp, to fall a few days later in the first battle of the Aisne, has already been printed in the magazine. Oliver Garsia's was my first experience of a personal loss in the war. I had received his letter—such a bright, game " Lower III " letter—only a week before I chanced on the announcement of his death in the *Morning Post*. Since that loss, over three years ago, many another old boy of my own time has followed. And when a chap came to you in the Lower III, or even earlier, and you had him again for a year or two in the Middle School, and finished with him perhaps in the Sixth, and had watched him through all the stages from serge blouse to " stand-up " collars with a pretty taste in ties, and even something of the dandiacal as to the socks—well, it is not comparable to the grief of a father for his son, of course, but we schoolmasters suffer too : we have so many gallant boys to mourn for.

But to return to my photo—the " gay Gordon," with his close-cropped ginger hair, his firm set jaw, the twinkle of humour in the eye that never left him—his was the individuality that impressed me most strongly of all the boys I ever taught. I suppose it was partly because he was a rebel. On the morning after he left school he walked up and down Worcester Street in front of the windows of the Masters' Room for a full hour puffing at a

huge pipe to show his independence. That was characteristic of him. At the little "Saturday nights" for the Sixth Form I used to hold in my cottage in the last term of each year, the rule was that boys who were leaving that term—all, be it remembered, young men of seventeen or more—might have ale and their pipes. Boys who were staying on had to drink lemonade and look on at the smokers. It was most "unmasterly" to let any of them smoke, I admit, or even drink small-beer, I suppose, but I'll wager none of them ever "split" on me; and the Head, when he reads these lines, will learn for the first time of this further breach of duty by his one-time graceless under-master, and, learning it, will forgive it as generously as he did all my other lapses from pedagogic rectitude. But I mention the fact merely to add that for two years before he did actually leave, Gordon Harper was "leaving" at the end of each year, and sucked his pipe at my "Saturdays" in lofty contempt for the poor devils who were "coming back." But all the space and more than the editor will allow might be easily filled with Gordon Harper; his dramatic triumphs in "Box and Cox" (or was it "Cox and Box"?), his ingenious practical jokes, his defiance of all school conventions, and his passionate loyalty to all of good the school stood for—gay, gallant Gordon; brief his life might seem to some, but he was, through it all, "The Happy Warrior." And I am constrained to believe that he fought the Turks in Gallipoli with the same imperturbable humour that he fought prenorious masters at school. But if anyone asks me to translate "prenorious" as applied to schoolmasters, I refuse, for this is a school magazine, and I must write nothing that might be subversive to discipline. But—well, my old friend Jackson was never prenorious.

I am sorry my photo contains only one representative of "The Three Families." Perhaps there are more now, but in my day there were "The Three Families"—and what families they were! The six Deanses, the six Guthries, and the four Lawrences. In all the fifteen years I was on the staff there was never a year without a Guthrie and a Deans at school, seldom one without a Lawrence. Never a scholarship boy in the whole sixteen, not a swot in the bunch, but honest workers at things that really mattered; never by any chance at the top of a form, but seldom below the middle. In the real life of the school—in all that made for character and had nothing to do with exams.—what grand chaps they were! The record of "The Three Families" is one to be proud of. Of the six Guthries, five have served—two killed; of six Deanses, four, and one just lately lost; and the four Lawrences—well, we are fighting in this war on four fronts, and there is a Lawrence on each.

But if the heroes of the Lower III have a warm place in one's heart, the stalwarts—and even the intellectuals—of the Sixth are not less dear to memory. Tom Currie, one remembers, disgracing the high dignity of monitor by introducing a fox-terrier into VI French to harry a humourless form master; and three more monitors joined in the riot that followed, and for the first and only time in history four grave and reverend monitors had their names inscribed in the "appearance book" to appear before the Head. And dear old Currie in after-life took himself so seriously too. There was "Rosseau" Reid and "Chummy" Campbell, Monty Clayton and Andrew Reese—a goodly fellowship of true men all—and all gone west! And that gentle and studious spirit George Mayne, intended by Nature for an even gentler and not less lovable Vicar of Wakefield, made strife instead

of peace his goal, and sought a career first at the Bar and then with the Forces—and made a good end. And of all the long roll of head monitors, the best, at any rate from the view-point of an assistant master, was "Jogger" Maude. I remember him first a quarter of a century ago, a little boy of ten. I can see him now in his blue serge sailor-suit when we read "Sir Patrick Spens" and "The Ballad of Chevy Chase" in junior English. I remember him last, a bronzed soldier of thirty-five, standing at the door of his hutment in Trentham Training Camp, bidding good-bye. He had the same bonny smile in his eyes then that won me at our first meeting, and it helps one to know that in all the years between there was never a rift—not even one "imposition" in the friendship that bound us.

I promised the Head to write some "cheerful reminiscences," and as I have failed lamentably in that I had better stop. But there are consolations. It is good to remember that I did not teach them overmuch; I certainly never worried them about their exams., but we passed bright hours and swopped stories, and were chums together. The fascination of the least common denominator left us cold, and the mysteries of science charmed us not at all; but we travelled much in the realms of gold; and in the cadences of "Kubla Khan" and "La Belle Dame," over the pages of "Esmond" and "Hypatia," and among the scenes of "Lear" and "The Tempest," we sought joyously, all of us together, to capture the gleam of Old Romance and to glimpse the humour of things.

Chapter VII

JOURNALISM

JOURNALISM in my case was merely a sideline, though a necessary and profitable one, to teaching. It was also a corrective. It checked in me, I hope, that tendency to dogmatism to which all teachers are prone because of their constant association with inferior, or, at any rate, younger minds. Teaching confines you to the world of the school; journalism forces you into the school of the world.

My "first guinea" brought me the same exquisite joy that it has, I expect, to every other literary aspirant. I received it from a Napier paper in my eighteenth year for a set of verses on a topical theme—a parody on Bret Harte's "Fight upon the Stanislow." But as I have not preserved a copy of those verses I am unable to say exactly how bad they were.

In 1891 I became attached to the contributing staff of the Christchurch *Press*, and my first leader appeared on January 21st of that year. It was on the "No Confidence" vote that drove the Conservative party out of power and brought in the Liberal party which, led by John Ballance, Richard John Seddon, and Sir Joseph Ward in succession, governed New Zealand for nearly twenty years.

During all the years I was leader-writer the task set me was to fight the battle of the Conservative "diehards" and to attack the Radicals in power; and attack I did, occasionally with a wealth of vituperation of which I am now ashamed. But party feeling in New Zealand in those days ran high and produced much bitterness on both sides, often fiercely personal.

I possessed no special qualifications for the profession of journalism when I entered upon it except a certain fatal gift of fluency with tongue and pen which has often stood me in good stead, but has also occasionally been my bane. I had, too, some capacity for writing lucid and forcible English of the kind demanded in the leading articles of a morning paper if it is to have any influence in shaping public opinion.

I joined the staff of the paper at an interesting time in its history. It had just come under new management and had embarked upon an energetic fighting policy in defence of the many vested interests, chiefly pastoral, that were supposed to be threatened by the party now come into power with its avowed policy of "bursting up" the large estates of the squatters and wealthy runholders by means of a graduated land-tax. For the purposes of this fight the paper was well provided with capital and courage, and its chief contributors were given a wide discretion.

In one article I remember I fiercely attacked a flagrant piece of political jobbery—the appointment to a high and dignified post in the public service of a man of notoriously disreputable character. The Editor—who, dear man, was as timid as a

hare—sent my article to the Company's solicitors for their advice upon it. "Libel in every line," said the lawyers; "it might cost the paper anything from one to three thousand pounds." I had small respect for lawyers in those days, I fear, and rather less for editors. I took the article and the legal opinion upon it to my friend the Chairman of Directors, determined to appeal to Cæsar. "Can you justify the libel?" he asked. "Every line and every word of it," I assured him. "Then tell the editor with my compliments that I regard the legal opinion upon it as the best possible reason for publishing it." And published it was next morning, with the result that it created no little stir in the country and in Parliament. But if the victim of my attack ever contemplated a libel action, he thought better of it. An honest newspaper has nothing to fear from the British libel laws; but it is not every paper that has the courage to act upon that conviction.

I threw myself into my new work with great enthusiasm, though I soon found that writing leaders for a morning paper was strenuous work for a schoolmaster. It was in the days before the typewriter had come into general use. I soon learned that I could trust neither printers nor proof-readers to decipher my crude handwriting. This meant that I had to wait in the office two or three nights in every week till one o'clock in the morning, and sometimes later, to see a "first pull," and as I had to be at prayers when school began at 9.30 in the morning, I found the work occasionally nerve-racking. Proof-readers are the bane of a journalist's life as examiners are of a schoolmaster's. In the

matters of spelling and punctuation they are unrestrained tyrants. Their way is the only way; your carefully chosen "colons" are converted into semi-colons; your felicitous use of the "dash" displeases the conventional "reader," and commas, or worse, are substituted; while your spelling is "favored" and "honored" with transatlantic obstinacy. As regards spelling, however, I expect I had more reason to be grateful to proof-readers than critical of them. For when in my eighteenth year I sat for an examination for a teacher's certificate I failed ignominiously in spelling. There were two hundred and thirty candidates, I remember, and my aggregate marks in six subjects placed me head of the list, but I had twelve words wrong out of twenty in a spelling test, and so received only a "partial pass." Next year I sat again—in spelling alone, and had fourteen words wrong! But as I had in the meantime won a University exhibition in English Language and Literature, and as I was after all only a benighted foreigner, I was generously granted the necessary certificate *speciale gratia*.

But a worse tyrant than the spelling and punctuation expert is the "genteel" proof-reader. In the course of a vigorous controversial leader I had occasion to refer, not without point, I hope, to the famous apology of the midshipman who had told the bo'sun he wasn't "fit to carry guts to a bear." Next morning, to my horror, I saw that "offal" had been substituted for "guts"; the "genteel" proof-reader had adapted Captain Marryat's breezy story to the vocabulary of the self-respecting nursemaid!

James Edward Fitzgerald, the founder of the

Press, set at the outset a high standard of literary excellence in its columns. Men like J. Veel Colborne-Veel, Sir Charles Bowen, and " Erewhon " Butler followed him ; and after sixty years, so far as my judgment goes, I can see no signs of falling away from this literary tradition. Men of wide learning and broad culture, trained in the Universities of Oxford and Cambridge, their English was based on sound classical scholarship and upon an intimate knowledge of the Authorized Version, without which neither written prose nor spoken oratory can ever, as it seems to me, attain distinction. Of Fitzgerald, by the way, a good story is told. At one of his election contests (he was the first Premier of New Zealand) he was subjected at the hustings to much interruption by a butcher who had acquired notoriety as a raucous heckler at political meetings and also as owner of the first sausage machine imported into the new settlement. The crowd grew tired of the butcher's interjections and heckled him in turn. " Leave politics alone and go back to your sausage machine," called one. " Yah ! " retorted the excited butcher, " if I had that Tory in my sausage machine I would soon make mince-meat of him ! " whereupon Fitzgerald said, " Is thy servant a dog that thou shouldst do this thing ? ' "

For five years I contributed to the paper a weekly " squib " column—satirical sallies and alleged humour—mostly about politics and politicians. I put myself in the way of hearing lobby gossip and obtaining some acquaintance with the personal idiosyncrasies of members of the House. Scattered through my Saturday column there are a dozen or

so of anecdotes that I feel tempted to snatch for a moment from oblivion—not for any intrinsic merit of wit or humour they possess, but because they illustrate the manner of men to be found in a Colonial Parliament.

The House of Representatives in the nineties seldom contained more than five or six " Labour Members "—strictly so called; but there was usually a fair sprinkling of working-men in both Liberal and Conservative ranks. There were still left—in spite of the " one-man-one-vote " franchise —a few wealthy men, runholders and squatters, some of them cultured gentlemen; but side by side with them sat a member who had once been lamp-lighter to the borough he represented, and another who followed, when the House was not in session, the humble but ancient avocation of a village cobbler—and a very good member he was. The New Zealand Cincinnatus was a boiler-maker. When elevated to a seat in the Upper House by the Ballance Ministry, the postman who delivered the Governor's warrant found him at the railway workshops, inside a boiler, strenuously hammering at the rivets.

A member who was at once uneducated and pretentious provided the gaiety of three successive Parliaments by a ludicrous combination of purism and pedantry with incorrigible ignorance. He condemned a " school reader " on the ground that it contained " coarse expressions "—" quite unfit for the ears of boys, to say nothing of girls ! " Challenged to cite an instance, he quoted the sentence, " The sailor ran amuck," believing apparently that the expressive Malay derivative contained an

inelegant allusion to a midden. It may have been from patriotic desire to attribute Scotch nationality to as many as possible of the worthies of history and fiction that he referred to a Greek philosopher as Archie Medes, and in a laboured quotation from Pope mistook the sex as well as the name of the wife of Hector and called her "Andrew Mackie." Laughter had no terrors for this intrepid soul; he had been to a feast of languages and stolen the scraps—and he wasn't going to waste them.

Foreign quotations or literary allusions, however, may be dangerous things even for the learned to play with. A Minister in a former administration who was a classical scholar and an enthusiastic student of Homer, was visiting a Board School on one occasion; his attention was attracted by a pretty little girl with large, brown, saucer-like eyes. He stopped before her and asked her, "My little girl, did you ever hear of the ox-eyed Juno?" The little girl never had. "Well, my dear, you are very like her," and, with a pat on the head, he passed on. The next issue of the local paper had a letter from an "Indignant Mother"—and indignant mothers have votes in this country—complaining that the Minister had insulted her daughter—before the whole school too! She had come home crying bitterly because "the gentleman said she looked like a cow."

On one occasion there was a proposal before the House to introduce chamois into the mountain districts of New Zealand. The clause was strenuously opposed by Mr. K——, a politician of Scotch descent, whose constituents included many run-holders in the mountainous country south of

Nelson. Had not the acclimatisation societies done enough mischief already, with their rabbits and sparrows, their stoats and weasels? What was this "chamois" anyway? A Minister—Mr. W. P. Reeves—obligingly sent to the library for a copy of Mark Twain's "A Tramp Abroad" and handed it to the member with this passage marked:

THE chamois is a black or brown creature no bigger than a mustard seed; you do not have to go after it, it comes after you; it arrives in vast herds, and skips and scampers all over your body, inside your clothes; thus it is not shy, but extremely sociable; it is not afraid of man, but, on the contrary, it will attack him; its bite is not dangerous, but it is not pleasant; its activity has not been overstated—if you try to put your finger on it it will skip a thousand times its own length at one jump, and no eye is sharp enough to see where it lights.

Mr. K—— solemnly read the extract to the House, without even a glimmering suspicion that Mr. Samuel Clemens was not a writer upon natural history; expressed his belief that "we have quite enough of these nasty jumping things in the country" and declared his fixed intention to vote against the Bill.

"Noxious weeds," equally with noxious insects, are responsible for one of the little incidents that relieve the tedium of Parliamentary proceedings. A member who had all a Yorkshireman's difficulty with his h's based on his own lingual deficiency a retort which he himself doubtless thought extremely felicitous, and which the members certainly received with huge delight. He was addressing the House on Sir John Mackenzie's "Noxious Weeds Extermination Bill," and in the course of his speech

made some exceedingly "tall" statements about the luxuriant growth of "Californian thistle" in his constituency—so "tall" that members received them with derisive incredulity. Sentence after sentence was greeted with incredulous "Ohs!" from every part of the House. At last the Yorkshireman turned on his tormentors: "You may hoh! and you may hoh! and you may hoh! But you can't 'hoh' me down." And then, after an inspired pause—"I hain't no noxious weed!"

On one occasion a member whose devotion to "this 'ere splendid system of National Education" was, as he frankly admitted, the outcome of his own lack of "schooling," was about to refer, in terms of eulogy doubtless, to the exemplary educational establishment in his own particular "model borough." "Sir," said he, rising to address the chair, "I have a school in my eye——" "No," came the prompt interjection of Dr. Fitchett—"only a pupil."

When Sir Julius Vogel, the Hebrew financier, who inaugurated what was known as the "Public Works Policy," returned from London after the successful flotation of one of his big loans, he was welcomed with great jubilation by the citizens of Wellington and honoured by them with a torchlight procession through the town. A political opponent—W. B. D. Mantell, M.L.C.—being met in a by-street by a friend who asked why he was not at the procession, promptly retorted, "*Le Jew ne vaut pas la chandelle.*"

But punning in French is by no means a common accomplishment with New Zealand politicians; their efforts at pronunciation are not usually suggestive of much familiarity with that language.

On one occasion when the French Consul at Wellington, the Count d'Abbans, had made a presentation of works of art to the House, a Minister, in moving a motion of thanks, referred to him as Count Door-bang ; the seconder called him De-e Abbans. The leader of the Opposition, who was in courtesy bound to speak to the motion, and whose French was not of "Stratford-atte-Bowe," was in a quandary : he could not utter the name correctly without appearing to pass a priggish reflection on the mispronunciation of preceding speakers. His wit, however, served him ; and he managed to make a graceful five minutes' speech in which he referred to the Count by half a dozen periphrases, all different and all felicitously elegant, without once mentioning his name.

His over-sensitiveness, however, was quite unnecessary. Members are seldom in the least put out by laughter at their solecisms. They usually retort that they haven't had the advantage of a college education like the member who is laughing ; they regret it, but are not ashamed of it ; and they sometimes add, in the best of good humour, that they are prepared "to back themselves" according to their particular avocation "to hump coal" or "fell Kauri pine" or "yard cattle" with the best man in the House ! And they are, not unfrequently, as good as their word.[1]

[1] Lest it might be supposed that any of these stories of solecisms and ineptitudes could possibly refer to present-day politicians, let me hasten to explain that they all date from the nineties. Indeed, they all appeared in an article "The Humours of Antipodean Politics" contributed by me to "The Empire Review" for December 1903. I take the liberty of anticipating the consent of its editor, Sir Clement Kinloch-Cooke, to my reproducing them here.

Actors, equally with politicians, furnished anecdotal "copy" for my Saturday column. I met many interesting men and women of "the profession," partly because it fell in the course of my work, still more, no doubt, because of my love for what reporters always insist on calling the "Thespian art." Living, as I did, at the antipodes, away from the centre of all things in London, I lost no opportunity of getting to know most of the interesting people who found their way to the colony. In this way I met lecturers like Stanley the explorer, Forbes the war correspondent, and Christie Murray the novelist—whose "Joseph's Coat" remains one of the best-told narratives in English fiction. Occasionally one struck a thoroughly disagreeable man, like the unspeakable "G. A. S."; but most of these visitors from the great world were well worth cultivating by us provincials.

Of the actresses I met, the one who left the deepest impression on my mind was the incomparable Geneviève Ward. She played Stephanie de Morivart in "Forget-me-not," The Duchess of Marlborough in "A Glass of Water," and Fédora in the tragedy of that name, and is still remembered by old playgoers in New Zealand as the most consummate artist who ever appeared on our stage.

A younger and more beautiful actress who strove to follow in the steps of Geneviève Ward was Janet Achurch. The main attraction in her repertoire was Henrik Ibsen's "A Doll's House," in which she made a most intriguing Nora. I rather think, but I may be wrong, that she was the first actress who ever played the part in English. I was asked

to "special" her by several newspapers in the Colony because I had acquired some reputation as an authority on Ibsen. I used to get his plays out from the Danish publishers long before they were translated into English, and was able in this way to keep in advance of English critics and translators. A monograph on "Henrik Ibsen's Social Dramas" which appeared in 1888 in a New Zealand magazine, "The Monthly Review"—long since, alas! defunct—was in fact my first contribution to magazine literature.

The mere list of names of a few of the actors who came to New Zealand reminds one how fortunate we are, distant more than 12,000 miles from London, in receiving visits from its theatrical stars. Would that the members of their supporting companies always came with them too; but this, save in exceptional cases, is, I suppose, too great an expense. J. L. Toole, Charles Warner, Robert Brough, Titheradge, Dion Boucicault, Edward Sass, Charles Hawtrey, Cyril Maude, and H. B. Irving, but not, unfortunately, his great father.

With Charles Warner I was on terms of affectionate intimacy and toured with him over part of the North Island, a stage-struck and love-lorn youth.

In London, of course, he was regarded as transpontine; he made his great hit, one remembers, in the part of Coupeau in Charles Reade's "Drink"—an adaptation of Zola's novel "l'Assommoir." But although his draw-piece on his colonial tour was a melodrama of the Drury Lane type, "Hands Across the Sea," he was greatly daring and produced out here plays in which London playgoers would

not have tolerated him—" The School for Scandal," " The Lady of Lyons," and even " Hamlet."

This last was truly a bold effort, especially having regard to the very meagre talents of the " stock company " from Australia which supported him. I remember being present at his performance of " Hamlet " on his last night in Napier. That was the only town in New Zealand in which he did not make money, and he was consequently in the worst of tempers at the end of his disastrous week there. He was to leave with his company for Auckland the same night, the steamer having been detained till after the performance, and everything was consequently in a turmoil. He was in one of his furious rages, directed on this occasion against the stage-hands, whom he charged, quite unjustly, with stealing from his laundry bags. They determined to pay him out by " ringing down " on him before he had finished the last scene.

Lying, in his most graceful attitude, well " down stage," the dying Prince adjured Horatio :

> Absent thee from felicity awhile
> And in this harsh world draw thy breath in pain,
> To tell my ——

" Quick curtain," whispered the arch-conspirator among the stage-hands ; and down it came, not with the slow pace appropriate to tragedy, but with the rattle and bang of a comedy drop.

Warner was furious ; but at first did not suspect design. He came before the footlights, apologised for the mishap, and begged the audience—already rising—to resume their seats. Once more he composed himself on the stage to die and up again

went the curtain. This time they allowed him to get as far as—

> But I do prophesy the election lights
> On Fortinbras ; he has my——

Again on " my," which was evidently the cue agreed upon, the curtain came down with a rattle.

The audience now began to titter, some to laugh. Once more Charles presented himself before the curtain. With a wave of the hand he silenced the tittering :

" Ladies and gentlemen, some infernal scoundrel among the stage-hands is determined to ruin my performance ; I am equally determined to finish it. I beg of you most earnestly to resume your seats for one moment and let me finish the play."

The audience responded with great good-nature to his appeal, and again he composed himself to die.

> So tell him [gasped the dying Prince], with the occurrents, more and less,
> Which have solicited ! The rest——

Thud, the curtain roller on the stage once more. He never finished that line—and, indeed, " the rest," was anything but silence. The laughter in the audience grew to a roar from the men and a shriek from the women—as the people made noisily for the exits.

The story, of course, got to London long before Charles ; all the theatrical papers " paragraphed " and " cross-headed " it ; and at every turn he was mercilessly chaffed about it. Poor Charles ! He had a warm and generous heart ; but with it went an egregious vanity, through which he was often

deeply wounded. It was, I fear, an accumulation of hurts to his self-esteem like this, coupled with the consciousness of failing powers as an actor, that made him ultimately violate

The Everlasting's canon 'gainst self-slaughter.

I saw a good deal of J. L. Toole on his visit to New Zealand early in the nineties. He had with him as " leading lady " Miss Irene Vanbrugh, then a beautiful girl in her 'teens ; his old friend Miss Johnson, who played comedy women ; Lowndes, Skelton, and Billington. He was troubled with sleeplessness, and someone—generally Lowndes or Skelton—had to sit up with him till two or three every morning to listen to his stories. Very frequently some college friends and myself would relieve them ; for what was an irksome duty to them was a great delight to us, to whom all his stories were new. Of all actors I have ever met, Toole was the most lovable. He was an excellent raconteur ; but he was entirely free from the vanity and jealousies so often bred behind the footlights ; and I never heard him utter an unkind or uncharitable word about any of his contemporaries in the profession.

Old as he was, he had not lost his love of practical joking. Seeing in the shop-window of a scenic photographer a view of the thermal baths at Rotorua with two coy-looking Maori maids standing up to their waists in hot water, *nudibus partibus*, he had himself photographed, naked to the waist also, and then got the photographer to " fake " him into the picture between the Maori maids, and so had

it re-photographed and re-printed. He wrote on the back, " This is how I take my bath every morning in this wonderful country," and sent copies to Henry Irving and others of his London friends.

I wonder if it is possible to tell a new Toole story ? This one at least I have never seen in print, and it has the merit of being thoroughly characteristic of the old actor's kindness of heart.

One night after his performance of " The Don " he was sitting with some friends in the smoking-room of his hotel. A stranger—obviously a farmer from " out-back "—came up and very diffidently introduced himself. He had that day come thirty miles in the saddle and sixty by train to see Toole on the stage " for old times' sake." Toole, of course, insisted upon a drink, and soon had the shy stranger at his ease.

" It's over thirty years since I saw you ; one night in Birmingham it was when you were playing Chawles—the footman, you know."

Encouraged by Toole's courteous interest he proceeded. " I believe I can recall the very night to you : you had a funny accident which you got out of splendidly. Your plush ' knickers ' came undone at the left knee ; you were holding a butler's tray in both hands ; so you cleverly wriggled the ' knicker ' back into place with your right knee and the audience roared with laughter. Do you remember ? "

" Shall I ever forget ? " said Toole. " It was an awful incident ; I remember it perfectly—at the Queen's in Birmingham, wasn't it ? " and then after an intent look at the stranger's face : " I almost think I can remember your face—front stalls you

were sitting, weren't you ?" Of course he was, and equally of course he was asked to stay—and did stay—to supper.

" I am glad you didn't give me away," said Toole to his friends when the man had gone, for they had seen the same accident happen in Christchurch only the week before. " I do hope he never finds out ! "

Toole had by that time played Chawles over a thousand times, and every time that trouser-leg had come adrift ! It happened first at a dress-rehearsal and he turned the accident into an amusing piece of " business."

I have no doubt the farmer returned to the back-blocks full of the story of how he had supped with Toole and how the great actor had remembered seeing him in the stalls at the Birmingham Theatre thirty years ago !

Chapter VIII

Samuel Butler

THE very best things in journalism are unhappily ephemeral. You write a leader and put into it the finest work you are capable of; if you are pleased with it, you amend and re-write, correct and polish; you wait in the editor's den till all hours to make sure the proof-reader hasn't spoiled your pet periods or the sub-editor blue-pencilled your brightest epigram. And then, when you are trudging homeward, tired out, in the small hours of the morning, you suddenly remember that not ten per cent. of subscribers to the paper ever read the leader at all; and of that ten per cent., probably not a single one thinks of it or refers to it after he has finished his breakfast.

But one article there was, contributed by me to the *Press*, that had a better fate and brought me into touch—though only by letter—with one of the most interesting personalities of his generation.

I had for many years been a keen student and enthusiastic admirer of Samuel Butler—not the Samuel Butler who wrote "Hudibras," still less the Samuel Butler who wrote the "Analogy," but the Samuel Butler who wrote "Erewhon."

On the publication of his book "Erewhon Revisited," I reviewed it at some length and in terms

of warm praise in a signed article which I contributed to the Christchurch *Press*. Someone, who knew his address, posted a copy of the paper to him, and thinking I was the sender he replied direct to me, thanking me for what he called " an extremely kind and gratifying article, warmly sympathetic in tone," and (in a subsequent letter) " much the most appreciative that any of my books has ever received." We exchanged some half-dozen letters in the course of the next few months. His last letter to me was written three weeks before his death on June 18th, 1902. He was then too ill to write himself, but dictated to his faithful " Alfred "—Mr. A. E. Cathie, for fifteen years his clerk and confidential servant. With this letter came a complete set of his works—some seventeen volumes—which he wished me to present, on his behalf, to such library or other institution in Christchurch as I might choose.

I selected the Christchurch Public Library, and the governors accepted what they realised was a very valuable gift with every courteous expression of gratitude and appreciation.

But when a year or so after Butler's death I sent a copy of his posthumous novel " The Way of All Flesh " to complete the gift, the Board of Governors, to my own great amusement, and to the huge delight of Butlerians in London, refused to accept the book. A member of the governing body had, it appeared, dipped into it and taken alarm. I wrote at once and demanded my former gift back, so that I could place a complete set of the author's writings in some other institution which would doubtless gladly receive it. This put the governors on the

horns of dilemma. So they compromised; they accepted "The Way of All Flesh," but placed the whole of Butler's books in a glass case under lock and key!

Visitors to the library are therefore graciously permitted to gaze at Butler's works through glass doors; if so minded, they may learn their titles and brag of their acquaintance. The governors, in agreeing to this compromise, no doubt felt that even "The Fair Haven" or "The Way of All Flesh," seen through glass doors, could not corrupt the soul of the most impressionable "young person." In these later days I am assured members of the governing authority of the library are gifted in full measure with that sense of humour so painfully lacking in 1903; but they have not yet remembered to unlock those glass doors!

Long before his gift of books reached me in New Zealand the donor was dead. Had he lived long enough to see "The Way of All Flesh" through the press and to learn from me how his books had been placed under lock and key by the governors of the Public Library in Christchurch, I can imagine how he would have chuckled and what a droll and whimsical entry he would, there and then, have made in his inimitable "Note Books."

But the treatment meted out to his books would not have disturbed him overmuch; he would have reflected, with unruffled confidence, that a day would come when the Christchurch Public Library and every other library in the English-speaking world would gladly welcome on its shelves the least orthodox of his writings. For, in spite of the failure of most of his books in his lifetime, he had a

serene faith in his own posthumous fame—a faith that has been amply justified in the quarter-century since his death.

This attitude accords with his doctrine of vicarious immortality, so well expressed in his fine sonnet "Not on sad Stygian shore," with its concluding couplet:

> Yet meet we shall, and part, and meet again,
> Where dead men meet, on lips of living men.[1]

The first letter I received from Butler was of exceptional interest because of its candid review of what he calls his "Ishmaelitic" position in literature. Mr. Festing Jones in his very full and complete biography reproduces this and the next letter from Butler to me, and even includes in his work one from me to Butler. But as the Memoir is in two bulky volumes and expensive to buy, there are doubtless people who are interested in Butler but have not read Mr. Festing Jones's admirable work. I therefore make no apology for including them here.

The first is dated February 17th, 1902, and is as follows:

My dear Sir,

I cannot allow the receipt of the extremely kind and gratifying article which reached me a few days ago to pass without a few lines expressive of the pleasure it has caused me. The only fault I have to find with it is that it praises both books too highly. As for "Erewhon," it wanted re-writing

[1] I have often wondered whether Butler in the last line of this sonnet was consciously or unconsciously indebted to the "Volito vivos per ora virum" of Q. Ennius, earliest of the Roman poets.

—but as that tree fell so it had to lie save for what additions were necessary in order to secure it a new copyright. "Erewhon Revisited," I confess, I prefer, and though scales will doubtless fall from my eyes in respect to it if I live a few years longer, at present I am afraid I am better pleased with it than perhaps any author ought to be with his own work.

When I was studying painting in my kind old friend Mr. Heatherley's studio, I remember hearing a student ask how long a man might hope to go on improving. Mr. Heatherley said, "As long as he is not satisfied with his own work." *Absit omen*; may dissatisfaction greater than I now feel ere long discipline me in great revenue!

Alas! it is not only "more than" thirty years since the embryo of "Erewhon" appeared in the Press, but close on forty! What a great gap of time yawns between now and then! And so in those days I was enthusiastic about Titian. No doubt; but he has not held his own with me as Handel has done: Handel, like Homer, and Shakespeare, grip me ever with tighter hold; what hold Titian, Leonardo, Raffaelle, and Michael Angelo have over me (and well—to speak quite plainly, I like none of them) is a hold on brain, not on heart. But let that pass.

If you knew, as none but myself and a few intimate friends know, how fiercely and continuously I have been vituperated almost from the very day on which "Erewhon" ceased to be anonymous, you would understand the relief it is to me to have at last written a book that has met with a cordial and generous reception. There have been few reviews of "Erewhon Revisited" to which the most captious author could take exception—but the intermediate books have all been dead failures; so much so that I am now more than £1,100 to the

bad with my books as a whole—a sum which being spread over thirty years has never pinched me—I cannot appeal *ad misericordiam*; I am exceedingly comfortably off—but I mention the sum to show how utterly flat the books have fallen as regards the numbers of their readers, though I doubt whether there is a single one of them that has not made a certain mark.

How could I expect anything else? With "Erewhon," Chas. Darwin smelt danger from afar. I knew him personally. He was one of my grandfather's pupils. He knew very well that the machine chapters in "Erewhon" would not end there—and the Darwin circle was then the most important literary power in England.

I fear "Erewhon" did not find favour again with the religious world. Still less did its successor, "The Fair Haven," do so. With "Life and Habit" the fat was in the Darwinian fire, and it was war to the death between us. This, and its successors "Evolution—Old and New," "Unconscious Memory," and "Luck or Cunning?"—to quote the words of a leader of the Darwinian party that were reported to me—"made Butler impossible." I sandwiched "Alps and Sanctuaries" in between the two last-named books, but I had got too bad a name for it to find favour with more than a very few, who, however, were delighted with it. Then came "Ex Voto," in which I fell foul of Layard and unearthed a whole school of sculpture of which the pundits of art knew nothing. No man can do this and be received with open arms. Then came my life of Dr. Butler—a book which was well received enough, but over which I was thankful not to have dropped much more than £200; and by tilting at Arnold I angered all Arnold's still powerful worshippers. Then came "The Authoress of the Odyssey"—why more?

The fact is that I have never written on any subject unless I believed that the authorities on it were hopelessly wrong. If I thought them sound, why write? The consequence is that I have throughout, I am profoundly thankful to say, been in a very solitary Ishmaelitic position, and I heartily trust that the temporary success of this last book may not tempt me to abandon the attitude which for so many years I have maintained, on the whole greatly to the satisfaction of my own conscience. Pardon me, dear sir, for the length to which this letter has extended itself (which it would not have done but for the warmly sympathetic tone of your article), and believe me,

Yours very truly,
S. BUTLER.

The second letter refers to the gift of his books:

DEAR SIR,

My answer to your very kind letter of Jan. 29, posted by me by anticipation on Feb. 17, is already by this time half way on its journey to Christchurch, and as it was, I fear, rather long, I will ask you to be kind enough to consider this as a simple P.S. When I wrote the body of the letter I supposed myself indebted to you for the copy of your article, which, pray believe me, is much the most appreciative that any of my books has ever received, and much the most flattering of myself.

When Sir Julius von Haast was here in 1887 I gave him a complete set of all the books that I had published up to that date, with a request that he would place them in whatever public library (I rather think he named that of the College) was the most appropriate. I have often wondered whether his death, which happened not long after his return to New Zealand, might not have prevented the

carrying out of my intention. Since 1887 I have written about as many books as I had done up to that date. Perhaps you or Miss Colborne-Veel would be kind enough to see whether the books were placed in any of the public libraries, and if so, in which. I shall be very glad to send a complete set (except my book about Canterbury, of which I have only one copy and which has been long out of print) or the balance of those that have appeared since 1887 in case the earlier ones are already in your library. . . . I should perhaps say that "Unconscious Memory" is a very scarce book—some years out of print. I have only three copies. Again thanking you, and resolute not to overrun the page,

I am, dear Sir,

Yours very truly,

S. BUTLER.

Butler's sojourn in New Zealand was brief: he arrived in January 1860, and left about four and a half years later. But brief as it was, he managed to make a considerable sum of money while here. He took up a sheep-run in the Province of Canterbury between two rivers—the Rakaia and the Rangitata—and gave it the apt name it still bears, "Mesopotamia." Writer, painter, and musician though he was, he proved himself also to be a shrewd man of business. The V-shaped hut with thatched roof which he built himself on his sheep-run stood for more than sixty years till it was burned to the ground in January 1926. There was a story, long current, that in making the roof he put the thatch on wrong way up so that the rain poured in; but that is just the kind of story that would be invented by a "practical settler" at the expense

of a "gentleman Jack" and "University swell" who was reputed to swear at his bullock-team in Greek, but who proved that, for all his learning, he could beat his neighbours at their own game of money-making. He not only made good profits out of his wool-clip during his four seasons, but ended by selling his "country"—as we call it—for very much more than he paid for it.

It seems worth mentioning that I am writing this chapter in my own fishing-hut on the north bank of one of Butler's rivers—the Rakaia—not many miles, as the crow flies, from his "country" at Mesopotamia. But *tempora mutantur*! This "cottage" is *not* "a thatched one," and the myriad descendants of the moths and mosquitoes that immolated themselves in the flare of Butler's "bush-man's lamp" and defiled with their obscene corpses the MS. of the first draft of "Erewhon" are humming and buzzing above me as I write, round a very modern electric light! Nor did Butler in his hut ever sit down to rainbow trout or quinnat salmon for breakfast!

On his death I contributed to the *Press* in Christchurch an article in which I endeavoured to estimate his place in literature and to convey an impression of his personality. This was afterwards included in a little brochure "Records and Memorials," edited by Mr. R. A. Streatfield, his literary executor, and published at Cambridge for private circulation. In the course of my article I was able to relate an anecdote which was a fresh contribution to "Butleriana," and which, as far as I am aware, has not been published anywhere else. I venture, therefore, to reproduce it.

I AM indebted to a friend, who was a fellow-student of Butler's at an art school in London, for an anecdote that illustrates the same turn of humour, but in less amiable vein. Some of the students eked out their incomes by painting piratical pot-boilers —landscapes ingeniously "composed" from different photographs—a stream from one, a rock from another,

> . . . in weird devices done,
> New things and old co-twisted, as if Time
> Were nothing.

One of these predatory knights of the mahlstick conceived a huge and somewhat embarrassing admiration for Butler, at that time addicted to Titian, and working in the "Life Room." "I really must admire that head, Mr. Butler," chirruped the obsequious one. "It is a true work of genius! A perfect Titian!" Presently, when his model was resting, Butler, filling his shiny little black clay, strolled into the room where the bore was at work. "I really must admire that landscape, Mr. Mills"—Mills smiled—"it is a true work of genius"—Mills beamed—"A perfect Claude"—Mills glowed—a brief pause, and then—"Duval."

Controversy is still busy round Butler's reputation; his place in literature and philosophy is still far from settled; but that he has a place and an abiding place no one any longer doubts. And as for the man himself—this vivid, picturesque personality, so full of colour and light and shadow—what verdict will posterity pass upon him? If those who knew him longest knew him best, how can one hope to draw his character aright from hearsay, or from his books, or even from his always charming

letters? The world probably never understood him, and never did him justice. But this seems certain, on the word of those best qualified to judge: he loathed all shams, religious and other; he hated all prigs, academic and the rest. Absolutely careless of public opinion, he hit to right and left of him wherever he saw what he deemed injustice or superstition or ignorance. Exceptionally kind in heart, he was a courteous, chivalrous gentleman. Unchangeable in his aversions and prejudices, he was equally constant in his attachments and friendships. He made many enemies, but he never spurned a friend. Why more? Fame could pass no higher eulogy on this laughing philosopher, this "fellow of infinite jest and most excellent fancy."

Chapter IX

LITERARY HACK-WORK

IN addition to leader-writing and "specialising" for New Zealand newspapers, I was able to add to my meagre income as a school-master by occasional contributions to London papers and magazines. I was for some years the Dominion correspondent for the *Morning Post*. How exalted an honour that was I did not fully realise till the Empire Press Delegation visited New Zealand in 1925. When I was introduced to Lord Burnham and other delegates by my style and title as a Judge of the Supreme Court, they were courteous indeed, but obviously not impressed; by the time they reached Wellington in their travels they were no doubt blasé of colonial dignitaries. But when it was mentioned that I had once been the New Zealand representative of the aristocratic London daily they were visibly awed, and the inimitable and delightful "A. P. H." of *Punch*, who was of the party, swept me a bow worthy of the Rajah of Bong.

An article from my pen appeared in the *Nineteenth Century* shortly after that great magazine added *And After* to its title; three or four contributions of mine were published by Sir Clement Kinloch-Cooke in his *Empire Review*; and one article—but I shall come to that story later in the chapter.

All this, however, was firing at long range, and many of my shots fell short: the article was stale or forestalled by the time it reached London.

One of my essays in the *Empire Review*, however, possessed some quality of novelty and literary interest which tempts me to reproduce it, substantially, here. It was called "An Historical Parallel," and described a resemblance which I discovered to exist, close even to the minutest details, between the Land Laws enacted by the Ballance-Seddon administration in the nineties in New Zealand and the *Leges Agrariæ* of ancient Rome. No one who knew Sir John MacKenzie, the author of these laws, would suspect him of much acquaintance with Roman history. I am satisfied, at any rate, that he was quite unconscious of the parallelism, and so far as I have been able to discover it has never been alluded to anywhere except in the article in question.

In this Colony at the end of the nineteenth century A.D., as in Rome in the middle of the second century B.C. "Land for the People" had become an insistent political cry. Large areas of our pastoral lands, purchased from Provincial Governments in the early days of settlement at as low a price as ten shillings per acre, were in the hands of a few "run-holders"; in Italy, the *ager publicus*, acquired by conquest from the Italian tribes, was under *occupatio* in large holdings by descendants of the original patricians. In 1892 Sir John MacKenzie introduced the policy of "compulsory purchase" by the State. In Rome the Tribune Tiberius Sempronius Gracchus in 133 B.C. dispossessed the patricians. The opponents of each loudly proclaimed the policy to

be " confiscation," though under the New Zealand Act the Government paid a price ascertained by valuation ; and in Rome Gracchus provided monetary indemnification for improvements made on the State domain. Each " possessor," moreover, was allowed to retain a definite area for himself and for each of two sons, so that, however, the family holding did not exceed 1,000 *jugera*—about 600 acres—in all. Under the MacKenzie law, as under the Gracchan, the principle of " limitation of ownership " was introduced, in each system of legislation, for the first time.

In New Zealand no man could acquire more than 640 acres of " first-class " land or more than 2,000 acres of " second-class " land ; in Rome the area of *ager publicus* which a single *possessor* could retain was 500 *jugera* of agricultural land or 800 *jugera* of pastoral land. In New Zealand the MacKenzie "small settler" could never acquire the freehold; he was given only a " lease in perpetuity " with definite restrictions against assignment ; in the same way the Gracchan settler did not obtain *dominium*, but only what was called an " inalienable heritable leasehold." In both cases it was obligatory to " reside " and " improve " ; each reformer was equally impressed with the evils of " absenteeism," and each was equally determined to guard against evasion of the limitation of ownership by restrictions against the holding of additional areas, nominally by a son or nephew or other " next friend." But the new settlers, both in New Zealand and in Rome, had usually little or no capital wherewith to begin farming operations. Most opportunely, Rome at that time had a windfall. Attalus, the young King of Per-

gamus, died after having bequeathed his kingdom and the whole of his considerable treasure to Rome. Gracchus, as Tribune, without, it is to be feared, any constitutional warrant, claimed the right of disposing of this money, and carried a measure which enacted that the Pergamene treasure should be distributed, probably as a State loan, among the new landholders to enable them to procure the necessary implements and stock. In New Zealand there was no Royal legacy left to the Government, but there was always the London market to resort to ; and so we passed the State Advances to Settlers Act under which the Government could make loans to farmers at a low rate of interest, with provision for a sinking-fund which extinguished the debt in thirty years.

Gracchus foresaw that in a very few years the whole of the available *ager publicus* would be absorbed by his scheme, so he planned that a definite sum should be appropriated each year from the public chest for disbursement by his " Allotment Commissioners " in purchase of estates in Italy for further subdivision. The New Zealand Land for Settlements Act, 1892, empowered the Government to borrow and expend up to £500,000 per year for the same object.

I was able to round off my comparison of the New Zealand with the Roman agrarian legislation by pointing out a coincidence in nomenclature. The Romans called the occupiers of the large estates *possessores* (*pot-sedeo*) because they " sat upon " the land ; in New Zealand we call them " squatters."

In one respect, however, my researches had been disappointing, and to this I referred in the con-

cluding paragraph of my article. I had not been able to find, in the pages of Niebuhr or Mommsen, any passage that could be interpreted as a reference to the existence of "dummyism" under the Gracchan administration; but I had no doubt, I ventured to say, that had this system of tenure survived the revolutionary turmoil that followed upon the assassination of Gracchus, a Roman "dummy" quite as ingenious and just as unscrupulous as the New Zealand variety would in time have appeared. This observation drew from a correspondent who had the advantage, which I had not, of knowing Greek, a reminder that in Plutarch's life of Tiberius Sempronius Gracchus there occurs a reference to "the man with the double face"—a Greek metaphor obviously much neater than our "dummy."[1]

That other article I have referred to had a strange and, I sincerely hope, an unusual history.

At one period of my life I knew a good deal about Maoris. I had spent several months in what was called the "King Country" at a time when that tract in the interior of the North Island was quite unknown to tourists and such people, and was in fact inaccessible except under circumstances of some risk and much hardship. I had lived among them, seeing no *pakehas* except my travelling mate. I had studied their language, their manners and customs, their folk-lore and poetry at first hand. I had hoped to write a series of articles, illustrated by photographs; but I soon discovered it was as much as one's life was worth to take a camera into

[1] Plut. Tib. Gracch. 8. Trans. by Church: "Afterwards the rich men of the neighbourhood contrived to get these lands into their possession *with other people's names*."

the King Country, for the Maoris confused the photographer's camera with the surveyor's theodolite—the instrument used by designing *pakehas* to rob them of their lands.

The more I got to know the Maoris the more attractive I found them to be. In that remote part of New Zealand they had not yet been corrupted by the vices of civilisation or degraded into cadging showmen, as they have since been in some districts, by the army of globe-trotters.

I was particularly impressed and attracted by something that appeared to me very Irish in the charm of their manners, the grace of their hospitality, and, above all, by the imaginative quality of their poetry, their legends, and their attitude towards the unseen world. My idea, I felt sure, was not merely fanciful, and so I developed it in an article which I called "A Celt at the Antipodes." I submitted it for criticism and suggestion to several of the leading Maori scholars in the Colony, and when finally I had got it into a shape that satisfied both them and me I sent it to my agent in London. As usual, I forwarded him a list of magazines to which the article was to be submitted in turn. The list comprised what I conceived to be the six leading monthlies (unillustrated) at that time published in London, and the first of them was the —— *Review*.

My article was promptly accepted by the first magazine to which it was sent, and by the next mail I received from the editor of the —— *Review* a very courteous note: he had read my article "with much pleasure" and "intended to give it early publication."

That was in the year 1904. It was at the end of

that year that I forsook school-teaching and turned barrister. I found the law an exacting mistress who left me no time for other interests; I ceased to write for the papers and forgot all about my "A Celt at the Antipodes." In 1909 I remembered it, and thought I might as well have the fee for it, at any rate—£15 I anticipated on the minimum scale per page at that time paid by the —— *Review*. So I wrote the editor a note to remind him of the article he had accepted in 1904. His reply was prompt and courteous; he had "re-read my article with very great pleasure"; he regretted the delay, but could now assure me of "early publication."

In 1911 I married; wife, home, and children filled my life with new interests and new happiness, and once more I forgot for several years the existence of that article. So obviously did the editor of the —— *Review*. Something or other recalled it to my mind in 1914—five years after my last reminder. This time I approached the editor indirectly: Mr. Gwynne of the *Morning Post*, at my request, rang him up in London and told him that "our New Zealand correspondent" felt aggrieved at the non-publication of his article, accepted ten years before with a promise of "early publication." Once more a prompt and courteous letter from the editor of the —— *Review*. Mr. Gwynne's communication had just reached him (September 8th, 1914); but as a war had broken out in Europe I would no doubt realise that only questions dealing with war and its causes had any interest for the public at the moment. "As, however, we all hope the war will be over by Christ-

mas " (this, remember, was written early in September !), the article would, " it was hoped," appear in the course of the ensuing year.

In 1919, after Peace had been duly made and celebrated, I wrote that editor again : this time I tried a little mild chaff. The year recalled to me that the time had come round once again for " my quinquennial reminder " ; it also suggested to me that the time was not far off when I must seriously contemplate writing a brief obituary notice of myself for the local morning paper, for if I did not do it, no one else, I feared, would ; and I was ambitious to say in the course of it that " among other literary activities he was *an occasional contributor to the* '—— *Review.*' " But I failed to " draw " him ; my chaffing letter elicited only the usual reply—always prompt and always courteous—" sincerely regret "—" early publication," and the rest. Five years later I wrote again, for the last time. On my appointment to the Bench I had to break up my home in Christchurch and move to Wellington. In the general " clean-up," I came across the editor's letters ; my patience was exhausted. So I wrote, I fear, a curt letter ; I had many years ago lost my own copy of the MS. of that article ; if, as I feared, he had mislaid the original, would he please say so ; if not, would he be good enough to return it ? In reply the editor wrote once more " regretting the long delay " and returned my original MS. as requested. It had lain, numbered and docketed no doubt, in that editor's drawer for twenty years. I regret that in my " impatience " I should have been guilty of the discourtesy of suggesting that he could ever have mislaid a MS.

or anything else. I have since had the pleasure of reading his autobiography, and venture to hope he may some day read mine—or, at any rate, this chapter of it.

But I do suggest that the method adopted by the great —— *Review* in dealing with contributions *accepted by it* is not encouraging to literary aspirants from the Antipodes! If the judicious publisher of this book—if one be found—does not think it already too long, perhaps he will print "A Celt at the Antipodes" as an appendix.[1] I leave it to his discretion.

[1] See page 353.

Chapter X

SOME HARMLESS CRANKS AND A KNAVISH IMPOSTOR

THE city of Christchurch has for some extraordinary reason always been a happy hunting-ground for eccentrics. In this chapter I propose to sketch a few of those with whom I personally came in contact. I apologise sincerely for including in one and the same chapter perfectly innocent and honourable cranks on the one hand, and a rascally impostor on the other. There is nothing in common between the two classes at all, except that Christchurch gave equal welcome to both, and that the innocent crank is of all people the most likely to be preyed upon by the impudent impostor.

Even in my student days I came to know some of the cranks. In my freshman's year I went one Sunday night with a number of other undergraduates to a lecture. The advertised synopsis attracted us. Bill-posters and newspaper advertisements gave out the subject: "The Earth is Flat—after all." This was really more than we could stand. As undergraduates in our first year, we flattered ourselves that in addition to being omniscient, we knew a little mathematical geography, and so we attended the lecture with the deliberate intention of "rocking" the meeting.

But we didn't. A very old man with a most venerable and kindly appearance came on to the platform, and, without any chairman or other person to introduce him, opened his theme. He had a very attractive speaking voice. There was something magnetic about him: he held his audience, undergraduates and all, spell-bound. With many learned citations from the ancients, with much abstruse mathematical calculation, he demonstrated that in spite of the evidence of the theodolite, the phenomena of the visible horizon, the shadow of the earth seen in eclipse—all the physicists and astronomers were wrong, and the earth was indeed as flat as the ancients had conceived it to be. Those were days when public meetings sometimes became riotous, and when stale eggs and dead rats were occasional weapons in popular controversy; and yet that audience, undergraduates and all, let the old man prattle on without serious interruption, and I like to record it as a merit in my fellow-collegians that it was a particularly unruly undergraduate who at the close of the lecture, in grave and perfectly decorous terms, proposed a courteous vote of thanks. The situation was full of humour, but it was also instinct with pathos; the audience fortunately appreciated the pathos quite as much as the humour. For the irony of it all was that the lecturer was a surveyor who, with his own theodolite, had surveyed much of the Canterbury Plains. When he was an old man, senile decay overtook the tired brain, and it assumed the ironical form of this obsession.

But I am afraid from what I heard that at subsequent lectures the audience did not behave so well.

I suppose there are those who will reckon Samuel Butler among the cranks who lived in Canterbury, for the views he held in the sixties were certainly divergent enough from accepted religions and philosophies to merit the term. But the crank of sixty years ago is the *sapiens* of to-day, and—well, in any case, I have already given him a chapter to himself.

There was one man who resided for some years in Christchurch who was as much a genius as Butler was, though not so versatile. This was Van der Velden, the Dutch artist. I don't know what drew him to New Zealand. He had, I believe, an established reputation in his own country. Paintings of his were already to be found in most of the galleries of Europe. But he wandered out to the Antipodes in search, perhaps, of a career less for himself than for his growing family. He was a *genre* painter of the Dutch school, given to doing sombre interiors in which the still life often interested him as much as the living figures, and in which there was always some touch of drama depicted. One of his pictures I saw from time to time over a long period of years. It was a large canvas, from memory I should say at least 8 feet by 6 feet. In the foreground sat a young Dutch peasant woman in a rocking-chair, her hands folded in her lap, her eyes looking into space, with a poignant expression of agony that justified the title "The Sorrowful Future." Those eyes, once painted, were never altered—the face, too, I think he let alone, as also some wonderful work done on the rocking-chair. He would take as much pains with his "still life"—an old Dutch clock on the wall, a crucifix in a monastery with a

glint of sunlight on it, a shawl over a woman's shoulders—as he did with the living *motif*. But everything else in that canvas he painted and repainted from year to year. I don't think I ever saw it twice the same. Now he would have a drunken sot of a husband lying in a torpor in the left foreground. At other times he would have one or more children scraping food out of a bowl or playing with a crude toy behind the young mother's chair. But if any feature failed to satisfy him he would dip a broad brush in paint and ruthlessly smear out the painstaking work of many weeks. I have myself seen him do that, sometimes in a paroxysm of anger. But the face of the woman he never touched. In that he seemed to know he had accomplished something which stamped the picture with genius. So far as I can remember, the last time I saw the picture there was no figure of a drunken husband in the foreground, but some scattered playing-cards and an overturned pewter flagon lying on the earthen floor of the cottage to suggest the ruin of the young wife's dream of happiness, while for the group of children behind the chair was substituted a baby in a Dutch cradle. It was a badly drawn and hydrocephalous-looking baby, I thought, but that really mattered very little; for in that huge canvas you saw only one thing—the tragedy in the eyes that looked into "The Sorrowful Future."

Van der Velden went to live in Sydney with his family for a few years. While over there on a visit I met him again.

I first saw him in King Street. He was in high fettle. He wore his slouch hat well over to the left, his cloak was thrown gracefully over his

shoulder as though to leave his sword-arm free, and he looked quite strikingly the part he sometimes affected, the "Laughing Cavalier." I greeted him without apprehension—I could see in his eye that he thought life was being good to him. "I have just sold "The Sorrowful Future," he told me, "to the National Gallery: they gif me £500 for it; the largest price effer paid for a bicture by any artist resident in Australia." At last he had found a city where his genius was appreciated, and he was off to the Blue Mountains, he told me, with his whole family to celebrate the event. He was in the mountains four weeks; did all the sights in chartered motor-cars, treated his family and himself to every luxury, and scattered his money with lavish generosity. After a month he returned to Sydney penniless. I met him again and asked him what he was doing. "Starrrving," was his gloomy answer. "But," I said, "I thought you had recently sold 'The Sorrowful Future' for a good price?' "Sold 'The Sorrowful Future'!" he roared at me with scorn. "Sold it? Bah! I geef it away!"

Van der Velden's friendship for me—and I am proud to remember that he regarded me as a friend—had a curious beginning. At the Exhibition of the Canterbury Society of Arts at which his works were shown for the first time in New Zealand, I was "specialled" by one of the newspapers to do a critique. Heaven knows I knew little enough about art, but then there were a good many subjects on which I wrote special articles without much special knowledge. I dealt with the local artists first, with the water-colours of Mr. ——, "the delicate little

seascapes" of Mr. ——, "the forceful study of rocks and sea-spray exhibited this year" by Mr. ——, and having dealt with all the Mr. "Blanks," damned some of them with faint praise, and lauded others with as much sincerity as I felt was justified, I proceeded to deal in a very different strain with the canvases of this great Dutch master who had come amongst us—canvases which were a revelation in craftsmanship, and should prove an inspiration to our young colonial artists.

By some freak of the printer's devil the "Mr." was omitted from before Van der Velden's name—perhaps the printer thought "Van" was Dutch for "Mr." At any rate, my friend met me in the street next day, and shaking me warmly by the hand, said "Alpére, you know noddings about ar-r-r-t; but you are a shentlemans." I was a little taken aback and asked to what I owed this generous appreciation. "You speak of the baintings of Mr. —— and the water-colours of Mr. ——, and then you say 'canvases of Van der Velden.'" Once more he gripped my hand, and repeating, "You are a shentlemans," strode off.

He was, in fact, a megalomaniac of a very harmless though most extravagant type. His *obiter dicta* on art and life, religion and philosophy, spoken in his thick Dutch accent, made thicker in the small hours of the morning by occasional potations of Hollands gin, were even more wonderful, I sometimes thought, in their flashlights on life than the most illuminating impressions conveyed by the masterpieces of his brush.

It was, however, in the matter of religious—or irreligious—eccentrics that the credulity of the

Christchurch people was mostly made manifest. There is one little wooden building right in the centre of the town which has a significant history. It was erected more than half a century ago by a handful of German residents in the town and consecrated as a Lutheran church. I several times heard service there conducted by a Lutheran pastor in his stuff cassock and Elizabethan ruff. I had acquired by that time a little more German than I knew in the days when I kept night-school at Napier. I remember with interest that this little church possessed the first complete chime of bells hung in Christchurch. They were a gift from Prince Bismarck to the German congregation in New Zealand, and were said to have been cast from a gun captured by the Prussians at Sedan.

It says little for the sense of humour of the townspeople that in response to popular clamour, and in pursuance of an Order in Council, these bells, early in 1915, were solemnly removed from their turret and melted down in a local foundry. But then humour does not thrive amid the clangours of war.

The little German congregation fell asunder, and the trustees in whom the building and site were vested leased the church for a term of years to the Free Thought Association. Again I went there one Sunday, out of curiosity, with some fellow-students. An Anglican clergyman, it had been announced, who had been unfrocked for heterodoxy, was to lecture. We went expecting to hear a philosophical discourse on the foundations of unbelief; but when we had listened for half an hour to banalities about Adam's ninth rib, and Cain's wife, and how Noah ventilated the Ark, we left the hall

in a body in high disgust. Militant free-thought went the way of evangelical Lutheranism, and once more the little building was untenanted for some years. It was then, I understand, put up to competition, and among the applicants, I believe, were Theosophists, Seventh-Day Adventists, and Christadelphians. But I have noticed since, by the name on a wooden board at the corner, that the successful tenderers were "The Spiritualist Church," for these good people are now the occupants. I understand that the devout gather there with much edification on Sunday nights to listen to the priceless wisdom uttered by Mr. W. T. Stead's Julia, Sir Oliver Lodge's Raymond, and Sir Arthur Conan Doyle's—er—merely Mary Ann.

The most remarkable of the many religious impostors who played upon the credulity of the Christchurch public was a man named Arthur Bentley Worthington. He called himself at first "Dr." Worthington, and let it be understood that he was a Doctor of Law from an American University. At other times he was "Counsellor" Worthington, a member of the American Bar; but as he could produce no diplomas in proof of these qualifications, and as pertinent questions began to be asked about them, he dropped them and allowed them to be forgotten, because he had very soon made them unnecessary. Before he had been many months in Christchurch he had firmly established himself in the hearts of hundreds of people as a Prophet of Righteousness.

He arrived from nowhere in particular, except that it was understood, and his accent confirmed this, that his country of origin was U.S.A. He

began his meetings in a small rented hall where he prelected upon what was vaguely called the "New Teaching." He possessed many qualities of mind and person which were valuable stock-in-trade for a charlatan. He had a handsome, intellectual face, with a fine head of grey hair, compelling eyes, with which he riveted the attention of his hearer, and a mobile mouth which he appreciated far too much to conceal by beard or moustache; his hands were finely modelled, and put to good use in gesture that was never exaggerated. He usually wore the frock-coat still fashionable in those days tightly buttoned around a good figure. One shrewdly suspected that his fondness for a frock-coat, which was already beginning to be relegated to shop-walkers, was assumed in order to disguise the fact that he was badly knock-kneed. This was the only defect in his fine physique, and even this, someone suggested, was not congenital but acquired from his habit of looking at the world through his legs and seeing everything upside-down. He brought with him from America a very beautiful woman of a singularly delicate and refined face, distinguished like him by a beautiful head of white hair; and she was as good and gracious as she was beautiful. Whether she was his wife or his dupe I don't know, nor, I think, in her case does it matter.

> To love, to sacrifice all, and be forgotten—
> That is woman's saga.

So wrote Henrik Ibsen in his youth. That, at any rate, was her saga; let it rest at that.

The "New Teaching" soon had adherents by the hundred. If I am asked to explain what the

new teaching was, I can only say I don't know. I never managed to understand it—nor did any of its adherents, and that was its strength. For Worthington had the gift of stating the most palpable platitude as though it were a profound and entirely new contribution to philosophy. The " Teaching " was a farrago, drawn from Plato, Bishop Berkeley, and Ralph Waldo Emerson. Worthington had undoubtedly a clever brain, but the cleverest brain turned loose on Plato (in a translation), adrift in the " idealism " of Berkeley's philosophy, or caught in the beautiful mazes of Emerson's thought, without the accepted cultural standards for guide, might well find itself hopelessly confused. I attended many of his lectures or sermons or whatever he pleased to call them, under instructions from a newspaper which sought to expose him, and if possible break his growing influence in the town. But in my armoury of satire, ridicule, and invective there was no weapon any more effective than Mrs. Partington's broom. I soon satisfied myself that the preacher did not understand what he preached. His obscurity was part of his attractiveness for the many. " He tells you something you don't get in the Churches," was an observation I frequently overheard among the crowd as they were leaving his lecture, and that at least one could endorse with a hearty assent. " Brethren," I remember him saying one night by way of illustrating his " idealism," " brethren, you think you see a lamp before me on the table. You think that lamp is an actual, concrete, permanent lamp. You are wrong. The only actual, real, and eternal thing is the concept of that lamp in your minds and mine." He developed

the theme and grew emphatic. He finally declared with great impressiveness, " The lamp you think you see is symbolic of the concept merely—it has no existence in actuality." And then, in one of his gestures, he knocked the lamp over at the very climax of his rhetoric! Fortunately no damage was done, although it was a kerosene lamp; there was no panic in the audience, no excitement. They hung upon his words and accepted unquestioningly the teaching of their prophet. Why should they be excited or panic-stricken? *There was no lamp there. Ipse dixerat!*

Had all his teaching been as harmless as his Berkeleyan " idealism " he might well have been allowed to go his way without interference, and been permitted without hindrance to enjoy to the full his reflection " O Lord, what fools these mortals be! " But there were other features of the " Teaching " in which he subtly insinuated doctrines subversive of public morals. There was, for example, the " Society of the Blue Veil," admission to which was open to spinster ladies only; and there were vague and uneasy rumours about the initiation mysteries. One suspected that Worthington, like so many prophets and founders of modern religions, was a sexual pervert. And when crash and exposure did at last come, this unpleasant conjecture was abundantly verified.

Equally, of course, the " New Teaching " was associated with gastronomic theory. There seems to be some mysterious affinity between fancy religions and fancy foods. Worthington inculcated and even enjoined a strictly vegetarian diet upon his followers. This was as much an essential part of

his teaching as the transmigration of souls. Therein he in part resembled Pythagoras, who ate lentils and bade his disciples " fear to kill a woodcock lest they dispossessed the soul of their grandam."

One of the staunchest members of his congregation, and the most trusted in that he was placed in charge of the inevitable collection, was a well-known and highly respected house-painter and decorator in the town. The prophet had firmly persuaded him that in a previous incarnation he had been engaged in painting the doors of Noah's Ark; and his simple acceptance of this article of faith seemed to lend a dignity to his bearing as he marched up the aisle of the Temple and deposited the well-laden salvers at the feet of the Prophet.

For the first few months the " Teaching " was promulgated in a hired hall; but dupes and adherents increased with amazing rapidity, and in a very short time there was erected on a central site in the city the " Temple of Truth." This was a large wooden structure, with seating accommodation for approximately a thousand people. The interior decoration was exceedingly crude and ugly, but no doubt impressive to the members of the congregation. The splendours of Jerusalem and Chicago were happily mingled. There were suggestions of Solomon's temple; and the triangles and set squares and compasses in massive gilt, with here and there a swastika, were suggestive to me of the symbolism of Freemasonry. But that may be because I am not a Mason.

The overhanging roof on the façade of the temple was supported on several huge fluted pillars that looked most imposing. They appeared to be of a

rough grey stone, and I wondered where this stone had been quarried. In consequence of information received, as policemen say, I tested these noble pillars. I found that they were hollow inside, and, what is more, they were made of wood. Apparently while the surface paint was still wet, coarse sand had been blown on to it, and this gave a most convincing appearance to the sham pillars of the Temple of Truth. I forget the cost of the structure. The Temple itself, together with the Temple house adjoining, in which the Prophet was sumptuously lodged, must have cost at least £10,000, and, unlike most temples and places of worship in the Colony, it was triumphantly opened free of debt. The adherents of the Prophet came forward with most lavish generosity to build the Temple. They gave tithe and double tithe of all their possessions. It must not by any means be supposed that the followers of this Yankee crook were all of them hysterical women or decadent men. As far as I could judge, and I attended a great many meetings of his congregation, they were just average, middle-class, business people. One was surprised at the number of men—they almost outnumbered the women of the congregation. One of these, a "black" or "white rod," or something equally important, was a very well-known pressman, very much a man of the world, something of a scoffer, we had thought, and above all, a generous liver. His conversion to the "New Teaching" came as a great surprise to his townsfolk, and especially to those who, like myself, were habitués of "Fleet Street." And it was no temporary mood so far as he was concerned. He was among the valiant die-hards who stood by the

Prophet until quite near the end. Some of us wondered whether this genial *bon viveur* really practised the whole of the teaching, including the beans and lentils diet. There was certainly no diminution of girth visible. Perhaps he had obtained what the High Priest had liberally given himself, a dispensation from the rigours of the vegetarian diet; for very soon after Worthington grew prosperous—and that did not take long to come about—one understood that a little quail on toast was permitted occasionally at his own table, and that the processes of digestion were helped by the Widow Clicquot.

The existence of this sect, if such it may be called, and the startling increase in the number of followers, would in any circumstances have been alarming to members of other religious bodies; but there were ugly rumours in circulation about the mysterious tenets and secret practices of the cult, and not orthodox people alone, but ordinary decent-minded citizens were taking alarm. Vigilance committees were organised, and some efforts made to get direct evidence in support of the charges made against Worthington. But every inquiry was met with the same explanation—the "lady in the case" always turned out to be a "spiritual sister" of the High Priest, a most virtuous adherent to the "New Teaching," and a woman, in most cases spinster or widow, whose banking account afforded a much more likely explanation than her gaunt figure and uncomely face for the attraction she appeared to exercise over the Prophet. An association of Protestant ministers had in the meantime been pursuing investigations in the United States, and at last there came to hand

through official sources the information which broke him. He had already shamefully deserted the lady he had brought with him from America, and had entered into a new alliance with a member of his flock. It now appeared that he was " wanted " in seven or eight States of the Union on charges of bigamy. He had, it was computed, at least eight " wives " alive in various parts of the United States, all of them the poorer spiritually and financially for his ministrations. The crash, so far as Christchurch was concerned, was complete. The trustees of the Temple of Truth shut its doors upon him, so he hired a hall and had the effrontery to announce a public lecture in his own defence. The streets in the vicinity were thronged with people. The magistrate, for, I think, the only time in the history of the city, was called in to read the Riot Act, and with police assistance the Prophet escaped with his life from the crowd.

Not long after he received a " call " to the pulpit of a large and important nonconformist congregation in Sydney ; but his pastorate there was brief. Again temptation presented itself in the guise of a widow of considerable means and greater credulity. Worthington persuaded her that he was Osiris, and she Isis, reincarnated to fulfil the high purposes of the Gods, and to sit enthroned side by side not in a world-old temple on the banks of the Nile, but on a plush-covered sofa in a Melbourne apartment house.

Having once persuaded the impressionable widow that she was indeed the All-Mother, spouse of the many-eyed God, he had but to tell her that the High Gods of Egypt practised community of goods, to

induce her to transfer her banking account. But, alas! Isis proved unfaithful to her Osiris, she prosecuted her god for fraud, and his career was terminated, so far as I have been able to trace it, by a long term of penal servitude. One of his Christchurch adherents, with a fidelity pathetic in its simplicity, visited him in his Australian prison, and there, to his grief and humiliation, saw the High Priest of the Temple of Truth, no longer robed as became his sacred office in the frock-coat of righteousness, but garbed in the crude coarseness of prison attire, engaged not in swinging the censer in the inner sanctuary of the Temple, but in scrubbing the prison bath with sandstone soap.

PART II

Chapter XI

A LAYMAN AMONG THE LAWYERS

IT was with very slender equipment, so far as its practical side goes, that I entered upon the learned and responsible profession of the law. But it was fortunate for me that many years before I had definitely made up my mind to the change I had become interested in Roman Law. The logical symmetry of that great system of jurisprudence, the broad principles that underlie the growth and development of Prætorian Equity, make it a fascinating and engrossing subject to study; and so I had for several years past been a diligent student of Justinian's "Institutes," in spite of the canine Latin that positively barks at you from his pages. I had also read—and I hope assimilated—Austin's masterly fragment "The Province of Jurisprudence Determined." When, therefore, I entered upon the particular study of the great Common Law of England I brought to it a mind not wholly untrained or entirely unused to the apprehension of legal conceptions.

But as I was now approaching the forties, if I was going to change my profession at all it was high time I did it. So I set to work in earnest at the beginning of the year 1903. I enrolled myself once more as a student at Canterbury College and

attended the law classes. I sat in the same stiff-backed seats facing the same ink-bespattered desks where I had sat when an undergraduate twenty years before. I well remember my delight when one night at a law lecture in 1903 I discovered, deeply carved on the desk in front of me, a quite unmistakable "O. T. J. A. 1884." I must have carved it in my freshman's year with a fixed determination, evidently, to leave my mark somehow upon the College I had just entered.

The lecturer [1] was a sound lawyer, with a thorough knowledge of his subject; and fortunately for me, he was a practical lawyer rather than an academic jurist, for while I felt reasonably competent to attend to the academic aspect myself, in the practical application of the doctrines in the books I should have felt utterly lost without his help. Fortunately also he was himself actively engaged in professional practice, and that no doubt is why he used to illustrate the legal principles he expounded to us, not with quotations dug out of "Smith's Leading Cases," but with citations from the current numbers of English and New Zealand Law Reports.

It was his custom also, I remember, to circulate among his students copies of the *Law Times* and the *Law Quarterly* whenever they happened to contain an article on some branch of our work. And, by the way, that reminds me—a few months after I had passed the examination for the LL.B. degree at the end of 1903, I found myself in conversation with one of the examiners. He narrated

[1] Mr. G. T. Weston, B.A., LL.B. He and three of his brothers were all graduates of Canterbury College, and members of the New Zealand Bar.

to me what he described as a very unpleasant, and at the same time very extraordinary, experience he had had in connection with that year's examination. His paper on "Real Property" had included a question on "Fixtures," which had suggested itself to him when reading a contribution on that subject in the *Law Quarterly*, in which the writer discussed two recent decisions in the Court of Appeal.[1]

"One of the candidates," said the examiner, "had cribbed his answer straight out of the *Law Quarterly*, which he must have had in his pocket. There could be no mistake about it: he not only had all the facts right, but he quoted verbatim from the judgments cited in the article. He even mentioned the names of the judges, and, as though he were determined to give himself away, he actually set out in his answer the reference to the volume of Reports in which each case was to be found! I never saw a more barefaced case of cribbing."

"What did you do about it?" I asked. "You reported him, I suppose!"

"Well, no; the fact is, I didn't. I daresay I ought to have put him up. Of course, I don't know who he was: examiners know only the code-words of the candidates—not their real names. But the most extraordinary thing about it was that all his other answers were quite good, and it was obvious that these had not been cribbed. In fact, his paper was so good all round that he actually got top marks. I couldn't find it in my heart to report him because he had done so well. But why on earth should a chap who knew his other work

[1] *In re De Falbe* (1901, 1 Ch. 523) and *Monti* v. *Barnes* (1901, 1 Q.B. 205).

go and crib just one question out of ten? And how in the world did he find out beforehand that there was a question in my paper on a subject discussed in a particular number of the *Law Quarterly*, and then bring that very number with him in his pocket?"

I refused to solve this conundrum and said I gave it up. I agreed with him that the conduct of that candidate was, as he said, most extraordinary —absolutely barefaced!

But it wasn't. For I was the candidate, and it was I who wrote that answer, but I didn't crib it.

The night before the "Real Property" examination I was about to turn in somewhere about 2 a.m., after doing a final revise of all my notes. I suddenly remembered that a *Law Quarterly* had been lent me by Mr. Weston, with an earnest injunction on no account to miss an article in that number on "Fixtures." I reflected that there might be a question on that very subject in to-morrow's paper, and I knew not a thing about it. Dog-tired and half-asleep though I was, I dared not chance it; so I lit my spirit-lamp, made myself a cup of strong coffee, rolled half a dozen cigarettes, and kicked myself awake.

When I went to bed an hour or so later I had read that article through, with my brain uncannily alert, and with my memory running in top-gear.

Some seven hours later—at 10 a.m. next morning —I was sitting in the examination-room with the "Real Property" paper in front of me, and there, among the questions, was one obviously framed on that very article! At that moment, I think, I could have recited the whole thing word for word

—stops and all. And so I amused myself by giving verbatim extracts from the judgments, recording the names of the judges—quite irrelevant, of course —and quoting the volume numbers in sheer exuberance of flippancy ; so " bucked " was I over my luck in having read that article the night before.

If that examiner should do me the honour to read this book, as I hope he may, he will learn for the first time how that " extraordinary " candidate, more than twenty years ago, mildly pulled his leg. He will learn also how warmly the " barefaced " one appreciated the kindness of heart that saved him from being " reported."

It is perhaps advisable to explain that in New Zealand the two professions of barrister and solicitor are not kept distinct : the same man may be, and usually is, both. A solicitor may practise in the inferior Courts and may attend at Judge's Chambers, but he cannot conduct cases in the Supreme Court. A barrister, on the other hand, may do all that a solicitor can do, and his own special work as well. He may conduct a solicitor's business in conjunction with his barrister's practice ; and he may enter into partnership with other barristers or even with solicitors who are not barristers. No one in a young community like this doubts that this union of the two professions is of advantage both to the members and to the public. But in the larger cities there is a growing tendency to keep the professions, in practice, distinct. In a legal firm there is usually one member who does barrister's work exclusively, leaving the solicitor's branch to the other partners.

Once you have passed the prescribed examinations, which are now reasonably stiff, entry into the

legal profession in New Zealand is a very simple matter. "Articles" are not compulsory; you may become a barrister or a solicitor or both without proof of any previous experience either of Court or office work. But, naturally, the great majority of men in the profession have been law-clerks before they became lawyers.

Having complied with the formalities required for admission, I was duly enrolled. The next step was to find someone who would take me into his office either as clerk or junior partner, so that I could get some practical experience. For a whole year I was looking for an opening, but I cannot say I found the demand for me at all brisk. The practitioners I consulted all seemed to think they could struggle on without me. So I stuck to my schoolmaster job for another year, and in the meantime devoted all my leisure to the diligent study of law.

My best asset, I think, was a knowledge of my own limitations. I might acquire a reasonable degree of skill in one profession, but I could not hope to do so in both. As the Bar had always been the goal of my ambition, I resolved to devote myself to that, and to leave solicitor's work strictly alone.

I realised I was too old to become a "profound" or omnisciently "learned" lawyer. I could not hope to emulate the type of pundit who goes to bed with "Jarman on Wills" under his pillow, and who prattles of "cross limitations" and "forisfamiliation" and "accelerating the remainder" with the same easy nonchalance with which I say "No trumps" when I sit with all four aces. That sort of man is a walking textbook.

But there is a worse type—the perambulating digest. This is the "case lawyer" who has an "authority" at his finger-tips to meet every point that comes along. "Ah!" he says, "that's covered by Brown and Robinson—House of Lords decision too—and absolutely on all-fours." You are ashamed to tell him that you have never even heard of Brown and Robinson, and as it's a House of Lords decision, you can't even have the satisfaction of telling him that you disagree with it. So what *are* you to say to that sort of person? Your only consolation is that he invariably loses all his own cases—or nine out of ten of them—and always for the same reason: because he can't see the wood for trees, and because that case of his "on all-fours" usually turns out to have only three legs to stand on after all.

But I did aspire to obtain a firm grasp of the broad, fundamental principles of Law and Equity. If I mastered these, I felt that I should be able with the help of my own "horse-sense" to apply them to facts as they arose, and to fossick out without much difficulty the particular doctrines and cases that bore upon the particular matters and circumstances in hand. For after all, I thought, there is much to be said for the views of Lord Foppington in the play—"What's the use of being able to read? Why stuff your mind with the forced products of another man's brain instead of being content with the natural sprouts of your own?"

It was my good fortune to have as one of my closest friends in Christchurch Mr. F. H. Bruges, an English solicitor profoundly "learned in the law," though without an atom of pedantry in his composition. It is no exaggeration to say that

in banking and company law particularly he had no superior in the profession. To him the discussion of a legal problem had the same fascination that some people find in a game of chess. We must have tramped hundreds of miles over the green sward of Hagley Park always "talking shop." He found in me, I think, a receptive pupil; I certainly found in him a consummate master, and learned from our "*Socratic Dialogues*" much more law than I could ever have acquired from all the text-books ever written.

At the end of 1904 I resigned my position on the staff of the Christchurch Boys' High School and bade good-bye to the profession of schoolmaster with all its responsibilities and pleasures. I entered into partnership with Mr. J. W. White in Timaru. My salary at the High School ceased on January 31st, 1905, and my emoluments from the partnership began to accrue on the following day, so I lost neither time nor money in the change-over. As Mr. White was Crown Prosecutor for South Canterbury—a post he had filled for many years—he could give me what I most desired—opportunities for gaining experience. Moreover, Timaru was distant 100 miles from Christchurch, so I thought it a safe place in which to make the mistakes that were inevitable in the first years. By the time I had produced a big enough crop, I hoped to have learned enough of my new profession to venture back to Christchurch, where I proposed ultimately to establish myself.

The partnership was to have been for a term of five years—a period I deemed enough for my apprenticeship; but by the time half the term had

run I had reaped so rich a harvest of blunders that I thought it quite safe to return to Christchurch, there to profit by them.

I had never in my life been in a Court except as a spectator, and I had never spent one continuous hour inside a solicitor's office. I was therefore a very raw recruit indeed. The first matter on which I was personally asked to advise was an affiliation case, and neither Justinian's "Institutes" nor Austin's "Jurisprudence" seemed to throw any useful light on the question. The title of one of Captain Marryat's novels I remembered to have read as a boy—"Japhet in Search of a Father"—sounded more helpful; but that diverting story was not included among the law-books in my library.

The incident that brought home to me most clearly my audacity in setting up in practice occurred the very day after I had commenced. A member of the profession in the town, Mr. M. J. Knubley, very courteously called on me, and, not wishing to come empty-handed, brought with him an affidavit to be sworn, together with the customary florin—the oath-fee charged in New Zealand. I had provided myself with a Bible as part of my small stock-in-trade, but I suddenly realised that I had not the remotest idea what form of words to use in administering the oath! So I had to appeal to my visitor, who obligingly dictated the formula to me, and was duly sworn.

There was the less excuse for my ignorance because many years before I had been told a story which involved the words of the formula. An old firm of London solicitors, nearly a century ago, was

tendered a spurious shilling in payment for an oath. To guard against the occurrence of such a calamity in the future, they amended the formula by an addition, which has ever since been in use in that office: "You swear that this is your proper name and handwriting; that the contents of this your affidavit are true; *and that the shilling you now tender is a good shilling*—so help you God."

The quarterly sessions for trial of criminals commenced at Timaru three or four days after I had entered upon my new work. My partner, with a courage I must admire, boldly handed over the prosecutions to me. I had a bad attack of stage-fright; but, after all, I had to make a beginning some time, and so I acceded to his suggestion to "jump in and splash."

The case first on the list was one of some difficulty. It rested entirely on circumstantial evidence of a complicated character. Much, I felt, would depend on the way it was put before the jury in the first place, and so I actually wrote out my opening address. I amended it and corrected it, dotted the "i's" and crossed the "t's" and spent much midnight oil upon it till I had turned out something that I felt tolerably satisfied with. On the whole, I thought, I would have no reason to feel ashamed of my first address to a jury.

But that polished and convincing oration was never delivered. I had entirely overlooked one possibility; for next morning the Grand Jury found "No Bill" against the accused. My belief in the institution of the Grand Jury was sadly shaken; but I have never again written out an address in a criminal case. The moral of this

would seem to be " Never do to-day what you can put off till to-morrow."

The other cases were simpler, and I managed to get through the sittings quite creditably. After all, criminal cases demand little more in Counsel for the prosecution than a reasonable amount of common sense: the golden rule for prosecuting criminals is the same as the golden rule for golf: " Don't press." Absolute fairness and moderation in presenting the case for the Crown is all that juries demand.

During my first year in practice I had to shoulder the grave responsibility of prosecuting on a capital charge; but fortunately it was only a case of infanticide of the ordinary type involving no special difficulties. A girl in domestic service " stooped to folly "; she had not confided her condition to anyone, and nobody apparently had observed it. Overtaken by the pains of parturition, with no one near to turn to for help, in her dismay she made away with the child. Neither the crime itself, nor the trial of the accused, presented any unusual features; it is the sequel only that is of interest.

The jury acquitted, as they nearly always do in cases of infanticide. The foreman pronounced the " Not Guilty " with explosive emphasis, while the other eleven looked as though they all wanted to say " Hear, hear! " and were only restrained by respect for the Court. But they were not content with a mere verdict of " Not Guilty," and presently the foreman, clearing his throat, read out from a paper in his hand, in a rich brogue that left no doubt of his nationality. " The Jury wish to state that they don't believe the poor girl knew

what she was doing when she did it." That rider, of course, was intended as a super-emphatic expression of the jury's sympathy. But the Judge ruled that it converted the verdict into a finding of "Not Guilty on the ground of insanity," and, to the visible indignation of those tender-hearted jurymen, he ordered the accused, in accordance with the provisions in our Criminal Code, to be detained in custody until the pleasure of the Minister for Justice should be made known. Whatever the jury might think of the girl's mental condition at the time the crime was committed, there could be no doubt of her sanity at the time of the trial. But the Minister of Justice did not choose to let his pleasure be known for twelve months, and so she spent that period in prison. And all this because a too sympathetic jury had over-acted the part!

Within a year of her release the girl gave birth to a second child—this time in Christchurch. Later on the same day the dead body of an infant was found in a trunk in her room, and she was again arrested. In the meantime I had returned to Christchurch and had commenced practice there: I was no longer prosecuting people, but defending them. The girl had evidently learned of my change of rôle and now asked me to defend her. She shrewdly suggested that if I would plead as hard for her this time as I had pleaded against her—or so she thought—on the former occasion, I might get her off. As she was to be charged with a capital offence, I considered that I had no option in the matter and consented. She had no money to pay me a fee, of course; but the Crown Law Office, following the practice usual in graver cases, paid me

an adequate sum for my services. This time the jury did not add any well-meaning but blundering rider to their verdict—they simply found the prisoner " Not guilty," and she was discharged.

And now comes the sequel that I have always thought so interesting.

The girl was entirely without any sense of moral responsibility. I had found in her neither remorse nor shame, nor the least trace of gratitude for what was done for her. She was an uninteresting and unattractive girl of a poor type mentally.

At the preliminary inquiry I persuaded the magistrate who sent the case for trial to place her in the custody of the Salvation Army instead of committing her to prison. She was accordingly detained, pending her trial, in a " Rescue Home " of which the Superintendent was an exceedingly earnest and kind-hearted woman, a Miss Johns, who had the Army rank of " Captain."

I called at the Rescue Home one day to see the girl about her defence. She at once asked me if I noticed any change in her. I told her I much preferred the simple Army costume she was then wearing to her former finery, and hoped she would dress like that at the trial. But that, it appeared, was not at all what she meant. So I tried again and told her that I noticed she looked much better —had a healthier colour ; but again I was at fault.

" Garn ! " said she, " I don't mean me clo'es nor me fice ; can't you see a chinge in meself ? "

I had to give it up and asked her what the change was that I was expected to see.

" I was converted last Wednesday night at nine o'clock."

I was tempted for a moment to ask her whether she was quite sure it wasn't 9.15, but I forebore, and asked her instead who had "converted" her.

"Gawd—and Captain Johns."

I told her I knew Captain Johns to be a good, kind woman, and I hoped she would profit by her advice and help. And then, to my astonishment, she actually thanked me, quite nicely too, for what I was doing for her. A change indeed!

Some months after her discharge from custody she wrote me a very illiterate but obviously quite sincere letter. She was in service up-country, she said, and had saved £2 out of her wages, which she enclosed in her letter as a first instalment of what she owed me. I had not told her that the Crown was paying my fee, and I did not tell her now, but put the £2 aside to await developments. From time to time she wrote to me from the same address and sent me various small sums of money which I paid in to the suspense account; and then one day I got a letter to say she was married.

About a year after that she and her husband came into town, and through the Army people arranged to see me; and to my office came not husband and wife alone, but—a baby!—a rosy, healthy infant, clean and nicely dressed—such a baby as any good mother might be proud of. And there was certainly no room to doubt *her* pride in that infant. I noted that she wore the simple plain serge costume and "poke" bonnet of the Salvation Army. Her husband, evidently a decent labouring man, told me they were employed as "married couple" on a farm—he working as ploughman and she doing house-work. He said they were very happy, and

both of them certainly looked it. He told me that he knew all about her past, and he was glad to say his "missus" was "keen set on the Army." So I took the opportunity of explaining that I had some money belonging to her and suggested she should spend it on a perambulator.

I don't profess to know anything about the psychology of "conversions." This one was obviously sincere: an unmoral and irresponsible girl had become a decent wife and mother. So far as I know, the effects of that "conversion" at "9 p.m. last Wednesday" are still complete and permanent. I merely state the facts and offer no comment. But I have never since been able to say "No" to a request for a subscription to the Salvation Army.

Chapter XII

'PRENTICE DAYS IN THE COURTS

IN the same month that I began practice I made my first appearance in a civil case in the Supreme Court. I was so fortunate as to be retained as junior in an important action between an hotel company and a newspaper company, which occupied adjoining premises in Christchurch. The defendant's printing machines, it was alleged, made so much noise at night that they interfered with the slumbers of the plaintiff's guests. The case, which lasted six days, excited a considerable amount of public interest, and as my leader assigned me the opening address for the plaintiff, it gave me a good "kick-off" in my new profession. Legal argument was removed by consent into the Court of Appeal, and this afforded me the opportunity of appearing before that tribunal also at an unusually early stage in my career, though this time only in a "heavy thinking part." The Court of Appeal granted the injunction sought by the plaintiff; but the Privy Council, alas! reversed that decision later. I felt myself fortunate in holding my first civil brief in a case which, if one may judge by the frequency with which it is cited in the Law Reports and referred to by the text-writers, is deemed

to have "made law," though not the law the plaintiff hoped to establish.[1]

The leader to whose good offices I was indebted for this useful "first footing" was my friend Mr. T. W. Stringer, K.C.—now my "brother," Mr. Justice Stringer. Opposed to him was Mr. J. H. Hosking, K.C.—now Sir John Hosking, also in after-years a Judge. I still have, pasted into an old scrap-book, a slip of paper I am very proud of. It was flicked across the Counsels' table to me when I resumed my seat after my opening address, and on it are written the very generous and encouraging words, "Very excellently done. J. H. Hosking." That was in February 1905. Twenty years later—in February 1925—I had the very great honour of being invited to fill the vacancy on the Supreme Court Bench created by his retirement.

For the information of readers who are not New Zealanders, it is convenient to explain here that in this Dominion the Judges of the Supreme Court are also Judges of Appeal. There are nine Supreme Court Judges, of whom one holds the rank of Chief Justice, *primus inter pares*. Grouped into two divisions of five—the Chief Justice being President of each Division—they constitute the Court of Appeal which holds sittings three times a year, always in Wellington. Appeals from a single Judge, therefore, are determined by his brethren, sitting three or more together. And so, said the late Sir John Salmond on his own elevation to the Bench, Judges in New Zealand have still left to

[1] "*Warners Ltd.* v. *Lyttelton Times Co., Ltd.*" (1906 N.Z.L.R., p. 746; 1907 A.C., 476).

them one enjoyment in life—the melancholy pleasure of reversing each other's decisions.

. . . . . .

But several years were to pass before cases of such interest came regularly my way. In the meantime I gathered valuable experience in the humbler Courts presided over by Justices or Stipendiary Magistrates.

My first case in the Magistrates' Court, I remember, was one in which my client, Mrs. Bridget O'Halloran, sued Mr. Timothy Brosnahan for "goods bargained and sold," to wit, a prime "porker." The defendant's solicitor, who also claimed the shamrock as his national emblem, reminded me years afterwards of what he thought my unusual and unconventional opening.

"If your Worship pleases," said I, "in this case I labour under great disadvantages. The plaintiff is Irish and the defendant is Irish; my learned friend is a Dublin man; and the matter in litigation is a pig!"

"Sure, your luck is clean out," said the genial Magistrate, "for my own forbears came from Connemara! But," he reassured me, "I'll try to give you justice for all that!"

And he did, too: three pound ten's worth—and costs.

My next case, oddly enough, was also about a beast—this time a bullock. The defendant kept a large boarding-house and had bought the bullock from my client "for the table": he now refused to pay for it on the ground that the meat was "unfit for human consumption." The beast had been killed for him, not by an expert slaughterman but

by a friendly neighbour. I elicited from the defendant that this neighbour was really a shoemaker by trade. Here, obviously, was the explanation why the flesh of my client's " prime beast " was so tough—faulty killing, of course !

The defendant looked a temptingly stupid witness, so I tackled him.

" Have you never heard the old adage about the shoemaker and his last ? "

But the stupid-looking one was not so stupid as he looked.

" Well, you know," was his answer, " *now that you remind me of it*, that meat was rather like leather."

I did not pursue that line of cross-examination any further.

It is often the most unlikely-looking witness who " scores off you " ; and beware of the witness who does that, especially if there is a jury in the box !

I had to examine a very old man once ; a tall, erect man with a long white beard, I remember. He looked benignly innocent and quite free from guile. But he was an old " West Coast " miner, and I ought to have known better. I had gone " special " to the West Coast on a mining case, and as the office of the solicitor who retained me was much too small for the purpose, I had engaged a sitting-room at the hotel in which to hold a conference of witnesses the night before trial, and of course true " miners' hospitality " had to be dispensed at intervals during the evening.

It was necessary, for some purpose or other, to elicit the exact age of the old man ; so at the end

of my examination I asked him how old he was. He appeared to resent the question.

"And what do you want to know my age for, young feller?"

"I merely want his Honour to see what a very fine memory you have got for a man of your years."

This, I thought, was rather adroit; and it appeared to mollify him, for he answered at once, "Eighty-five."

But his resentment returned—perhaps he thought I had been "soft-sawdering" him.

"Look 'e here, young feller," he said, "I saw you do two things at Keller's 'public' last night that I have never done in my life—not yet—although I am eighty-five."

It would never do to shirk; I must take whatever was coming to me; so I asked him politely what the two things were.

And then, with withering contempt for me, as a modern decadent, came his answer:

"Carrying a walking-stick and mixing water with your whisky!"

It was in this same case that I had very explicit instructions with regard to one of the witnesses for the other side—a man with many years' experience as a working miner. "This man will certainly lie; you must cross-examine him into a cocked hat." It is so easy for the solicitor at his desk to engross on counsel's brief these illuminating "Notes on the evidence," and so very difficult for counsel in Court to carry the instructions out.

The moment the witness stepped into the box I saw that he looked a shrewd and competent man and would not be easy to fit with that "cocked hat"

the solicitor spoke so glibly about. So I "skirmished round" warily. I began by asking his opinion of the value of certain mining claims—"Rimu Flat," "Seddon's Terrace," and "Hangman's Gully"; but he professed to have no knowledge on the subject. So I tried a little flattery—as I thought.

"But I would like to hear your opinion on these matters—you no doubt have some opinion—as a mining expert."

"God forbid!" was the disconcerting answer; and then, seeing I looked nonplussed, the witness himself came to my rescue:

"But if you ask me as an *experienced miner* now——"

I had not known before that moment that in the mining districts of New Zealand, and in the vocabulary of working diggers, "mining expert" is the accepted synonym for "rogue" and "sharper."

The prospects of fitting the witness with that "cocked hat" did not look very bright, I thought.

In the days when I first practised, most of our Stipendiaries were laymen. Of those I most frequently appeared before, one was a retired naval officer, and another had been a Major in the Army and had fought in the Maori Wars. They were both men of the world, with a shrewd knowledge of life, gathered from more reliable sources than books, and both were gentlemen. They had far too much natural dignity to need to assume any of the "official" variety, and they were content to rely upon the knowledge of law possessed by Counsel without attempting to air their own.

One day when I was appearing before the Major

in a country Court, I was particularly anxious to nonsuit the plaintiff without going into evidence on behalf of my client, the defendant. If I succeeded on the nonsuit point I should be able to catch the afternoon train back to town instead of spending a night in a second-rate boarding-house in a no-licence town ; and the Major, I knew, would no more relish a night in a " dry " district than I would.

I was just getting into my stride and developing my submissions for a nonsuit when I observed, to my indignation, that the Magistrate was fast asleep !

" Look," I said to my " learned friend " at the counsel table beside me, in a voice that was meant for a whisper—" look, the damned beak's asleep ! "

" Yes ? " said the Magistrate, his eyes wide open —" I am afraid I didn't quite catch your last sentence."

" I was about to submit——" I began in some confusion.

" By the way," his Worship interposed, " have you noticed that this page of the plaintiff's ledger has clearly been tampered with ? There are several erasures, and at least three different shades of ink."

This was the very point I relied upon ; but I had sense enough to pretend that I had not seen it.

" No, sir ; as a matter of fact I hadn't noticed it ; I am indebted to your Worship for pointing it out ; and as your Worship has detected it yourself, I won't take up any more of the time of the Court."

The plaintiff was promptly nonsuited with costs, and we all caught the train.

That night I chanced to meet the Major at bridge. He was in his best form and took 1,500 points off

me. As he pocketed his winnings at the end of the game he said to me with his characteristic chuckle :

" I hope you have found the ' damned beak ' wide-awake enough for you this evening ! As a matter of fact, you did send me to sleep in Court to-day ; but when you are annoyed—and you *were* annoyed this afternoon, you know—you whisper like a megaphone ! "

The Major was a most agreeable man to appear before ; you could always depend on him to relieve the tedium of the dullest case by some whimsicality or other ; but anything approaching " high falutin' " from counsel received short shrift at his hands. I remember being present in his Court one day when he was relieving in Timaru. It is necessary to explain that about a mile to the north-west of the town is the suburb of Smithfield—appropriately named, for in it are situated large freezing works where " prime Canterbury " lambs are slaughtered and frozen for export, and there, too, are the municipal abattoirs. When the wind sits in that corner you know all about it.

A painfully earnest and entirely humourless solicitor was up to defend a woman charged with fortune-telling. His client, he urged, was not a common fortune-teller ; she was a spiritualist—a member of " a recognised religious sect," who was merely practising the rites of her religion according to its tenets. This, said the earnest one, was not a prosecution, but a persecution. He rose to his theme :

" We don't want to import into this young country " (I am not sure he did not call it " God's own country ") " the religious feuds and persecu-

tions of the old. We don't want to rekindle in our midst the martyr-fires of Smithfield——"

"No," said the Major sharply, "certainly not; there are quite enough bad smells from Smithfield as it is. Forty shillings and costs. Next case."

We have a great variety of Courts in New Zealand, and in those early days I practised in most of them. But one Court I fortunately managed to steer clear of—the Native Land Court—for I despaired of understanding the intricacies of Maori tenure.

But as there was a native settlement close to Timaru I had quite a large Maori clientele, and was from time to time engaged in litigation in which Maoris were concerned. It all originated in a very trumpery case, which, however, firmly established my *mana* (prestige) among them and brought me much business in subsequent years. I was instructed to defend a Maori on a charge of netting trout in the Temuka River. My poacher client was a shrewd young fellow, quite a personage in the tribe, who of course looked upon him as a much wronged individual and something of a hero. On the other hand, the Acclimatisation Society's ranger, who had caught him red-handed, was about as popular in the *Kainga* as a process-server in an Irish village or a customs gauger in a Scotch one.

I had expected the case to be heard before the local Justices, and this had emboldened me to propound a defence which I could scarcely hope to succeed with if an experienced Stipendiary were on the bench. It had at least the merit of novelty, and it certainly sounded plausible. It was a constitutional argument based on the second Article of the Treaty of Waitangi (1840). By its terms, in

consideration of the cession by "the Chiefs of the Confederation of the United Tribes of New Zealand" of all their "rights and powers of sovereignty":

ART. II. Her Majesty the Queen of England confirms the guarantees of the chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and *undisturbed possession* of their lands and estates, forests, and *fisheries*.

As the eel-weirs of the tribe had been set in the Temuka River from time immemorial, this attempt by a *pakeha* society to restrain the members of the tribe from netting a stray trout—a trespasser at best!—was an unwarrantable interference with their ancient rights of fishery and contrary to the terms of the Treaty in that behalf made and provided.

Unluckily a Magistrate came out from Timaru to hear the case, and he ruthlessly swept aside my portentous constitutional argument by distinguishing between indigenous fish covered by the Treaty and the immigrant "rainbow," progeny of ova imported by the Acclimatisation Society's from England long after the solemn pact had been entered upon.

But the mere fact that my client was convicted and fined mattered nothing; that was only one more "injustice to Ireland." What did matter was that this champion of ancient rights had had a good run for his money, and that I had taken my stand firmly upon the sacred charter of Maori liberties—the Magna Charta of New Zealand.

And so I was a very fine fellow indeed, and everything was *Kapai*.

Maoris dearly love a lawsuit ; the more witnesses there are and the longer it lasts the better they like it. But they are naturally law-abiding people, and the percentage of criminals among them is not large. Oddly enough, forgery is the crime to which they seem to be most addicted. This is partly perhaps because Maoris when educated are usually expert writers ; but it is also due to the fact, I think, that the mysteries of banking at once attract and puzzle them. If a Maori is informed that his account is overdrawn, the course that most naturally suggests itself to him is to write a cheque to put it in credit.

A story long current, and often told, is so characteristic that I am tempted to repeat it :

A pakeha, who ought to have known better, sold a horse to a Maori for £20 and accepted payment by cheque. A few days later the Maori, calling at the post office in the township, received a reply-paid telegram, " Sorry lost your cheque : please stop payment." The postmaster offered to write out the reply for him, and asked what answer he should send. The Maori scratched his head and looked puzzled for a moment. Then his face cleared and he said brightly, " Tell him ' You no worry ; cheque stop himself.' "

Chapter XIII

AT THE BAR IN CHRISTCHURCH

IN October 1907 I established myself as a barrister and solicitor in Christchurch. I hoped my fellow-citizens would have forgotten by this time that I had once been a schoolmaster. I took care, by suppressing the letters I was entitled to write at the back of my name, and relying solely on those in front, to avoid all suggestion of the academic in my professional make-up.

I occupied offices in Cathedral Square, on the first floor of a building of which the ground-floor was tenanted by the District Agent of the Public Trustee—Mr. M. C. Barnett, who was fortunately a personal friend. My "staff" was one small boy at 7*s.* 6*d.* per week; my friend's staff was only three men and a lady typist, but the business of the Public Trustee was fast expanding, and to-day, twenty years later, there are about a hundred clerks in the Christchurch Branch. But to occupy rooms immediately above the Public Trust Office was a trying experience. Each day I would see from my window—I had little to do at first but look out of the window—three or four widows, sometimes more, crossing the Square from the tramway stop, and making straight for our building. But which floor? Would one of them ever mount the stairs

to instruct me to apply for probate of the will of her departed spouse? At last the great day came. The "staff," with an expression of hope and importance on its face, put its head inside my door, and whispered, "A lady to see you, sir"; then, placing in front of me a slip of paper with her name on it, and bringing forward a chair for her, showed her in. The name was familiar to me—I had seen the death of her husband announced in the papers a few days before, and I said something appropriately sympathetic as I asked her to be seated. She took some documents out of a reticule she carried, obviously the will, and then, as though seized with some doubt or misgiving, she said, "I have come to the right place, haven't I? You *are* Mr. Barnett, aren't you?" "No, madam, no—downstairs, madam," and I showed her out, I can well believe, in much the same tone and with much the same gesture as I had used in College theatricals twenty years before when I played the part of the Crushed Tragedian.

But good came of it, for when I told my friend Mr. Barnett he laughingly promised to send upstairs to me his office affidavits, and there were enough of these to pay my rent for the first month or two. Subsequently I got a brief here and a brief there, till, during the last six or seven years I was in practice I held practically all the briefs of the Public Trust Office at Christchurch, to my no small profit, and, I hope, to the advantage of the Public Trustee, for I lost only one case for him in all those years.

When work did begin to come in, it came at first in the shape of Police Court cases; and I know of

no better school in which to learn the art of advocacy. At the second quarter sessions after I had set up in practice in Christchurch there were eight criminals for trial. I defended six of them, and was so lucky as to get an acquittal in every case. My fortune, I felt, was made. With such an auspicious beginning I must soon have the leading criminal practice. But, alas for the fickleness of burglars and their kind, it was nearly two years before I got any more criminals who, from a financial point of view, were worth having.

My very first criminal client, I remember, was a woman, big, buxom, and decidedly hefty, of the same profession, and I should think much the same temperament, as Falstaff's Doll Tearsheet. She was charged with assaulting an intruder with a flatiron. This she had used with such good effect that some of the alterations to his physiognomy, I believe, remained permanent. " Provocation and self-defence " was the only way out for me, and I made the best of it. Unfortunately my client was indicted under the name of Beatrice Too Fee, being in fact married to a Chinaman who kept an opium den. This would be likely to prejudice the jury strongly against her. Luckily she had, or affected, a slight brogue, and by carefully referring to her always as " Mrs. Toovey " I hoped to produce the impression on the jury that her husband was an Irishman. She had paid me a good fee, she was my first criminal case, and she was a woman—everything was there to stimulate my efforts, and I think I missed nothing. My address to that jury was a forensic *tour de force*. I overwhelmed the hapless prosecutor with ridicule and invective, and invoked

in favour of my client every sentiment of chivalry and mercy that could be wrung out of twelve jury hearts. In spite of the strength of the case for the Crown, I secured a triumphant acquittal. Next day my friend the Crown Prosecutor told me he had asked the Judge what he thought of my maiden effort. "Well," said Denniston J., "of course he got her off, but there were moments when I wondered if he confused the defence of Beatrice Too Fee with the Impeachment of Warren Hastings." That case was my first, and my last, experience in "forensic oratory" after the early Victorian manner.

I soon had a lucrative crop of divorce cases. These were not as numerous in New Zealand then as they have become since the Great War, but they were comparatively profitable. In my experience, four out of five divorces in New Zealand, perhaps nine out of ten would be more accurate, are undefended. Most of them are grounded upon desertion, or upon an agreement to live apart, in force for three years or upwards.[1] So far from the respon-

[1] The grounds on which a divorce may be granted in New Zealand either to a wife or husband are: (1) adultery, (2) desertion for three years, (3) habitual drunkenness for four years coupled in the case of a husband with habitual cruelty or habitual failure to support, in the case of a wife coupled with habitual neglect of domestic duties, (4) sentence of seven years or more for attempting to murder or doing actual bodily harm to the petitioner or a child of the petitioner or respondent, (5) unsoundness of mind from which there is no likelihood of recovery, and detention in a mental hospital for seven years or upwards, 6) failure to comply with a decree for restitution of conjugal rights, (7) *de facto* separation for three years and upwards under a decree of judicial separation, a summary separation order made by a magistrate, a deed or agreement of separation, or separation by mutual consent, whether in writing or not, provided

dent rushing in with an "appearance" and "answer," it is sometimes a race between husband and wife as to who shall be the first to start proceedings. Any common-law clerk of average competence can take all the preliminary steps, and your appearance in Court as counsel seldom takes more than fifteen minutes. My own record at the Bar was nine decrees *nisi* in forty-eight minutes; but that was an exceptional morning. I had an important case to attend to in another Court, and the Registrar very obligingly helped me by grouping my cases together and by accelerating the procedure. My petitioners and their witnesses were ranged in a queue behind me on the floor of the Court like theatre-goers on a "first night." I think the Judge must have helped also, and entered into the spirit of the thing. Perhaps he too was seized for the moment with the prevalent New Zealand passion for record-breaking.

My first client in divorce, I remember, was a grocer's assistant, an insignificant little wisp. His wife, a tall, handsome woman, had abandoned him for a lover, a fine figure of a man, who might well be supposed to have supplanted the insignificant grocer in his wife's affection by reason of his manly graces. But that was not the motive she gave for running away. The respondent was a factory inspector, and when the Judge asked her why she had left her husband and children in this way she naïvely confessed that she wished to better her social position!

that the respondent does not oppose the petition and prove that the separation was due to the wrongful act or conduct of the petitioner.

In another case the petitioner was a middle-aged woman, uncomely in appearance, but the sole proprietor of a very flourishing little drapery business. She took into her employ as "first counter hand" a handsome young fellow, of good address and good manners, who must have been ten to fifteen years her junior. He soon discovered, to his great embarrassment, that he had won the virgin affections of the elderly spinster. He must either capitulate or resign from his well-paid post. The business was exceedingly prosperous, as he very soon learned from experience in the shop. He was artfully made aware that the business was not her only asset—there were shares in one or two mercantile concerns, and even in a brewery. And so he succumbed to temptation—he married the shop and took over the coy proprietress as part of the stock-in-trade. But repentance followed fast upon the heels of romance. At the end of three months he fled ignominiously, and was not heard of again.

When the statutory period for desertion—I think it was five years in those days—had elapsed, the lady bethought herself of seeking her freedom, possibly with a view this time to marrying her shop-walker. Inquiries of the usual perfunctory kind were set on foot to ascertain the whereabouts of the husband. As no trace of him could be found anywhere in the Dominion, application was made to the Court for leave to proceed on substituted service, by advertisement or otherwise, or to dispense with service. The affidavit setting out the efforts made to find the respondent and their non-success, together with other relevant facts in support

of an application to dispense with service, had actually been engrossed, and she was to come into my office next morning to swear it. She came at the appointed time, an excited and distracted woman. "I can't swear it," she sobbed—"I can't swear it. I know now where my husband is." "How do you know?" I asked. "I saw him last night, for the first time for six years, at the Starland Picture Theatre." "What," I said, "is he in Christchurch?" "No," she sobbed, "he was on the screen, with the heroine in his arms—k-k-kissing her." And her sobs rose to a wail of jealous anguish. I consoled her by pointing out that this inopportune discovery of her husband's whereabouts really did not matter; it entailed merely a few pounds of extra expense, and a delay of three months till the next sittings of the Court. The respondent was duly served at the studio, "theater," "movie factory," or whatever else they call it, of the Metrograph Film Company, Inc., Los Angeles, California, U.S.A. The handsome young draper's assistant, it is interesting to know, is now a cinema actor of rising fame.

My first libel action presented a difficulty of an unusual kind. The plaintiff had been libelled in a paper called *Norton's Truth*, at that time a New Zealand reprint of a well-known Sydney weekly. The paper had published two columns of grossly defamatory matter charging him with dishonesty. Unless he vindicated his character in the Courts, and that promptly, the effect upon his personal as well as his business reputation would be ruinous. But the proprietor of the paper was at the time travelling. He was away on a twelve-months' trip

to Europe and America, and many months must have elapsed before personal service of proceedings could be effected. The paper, however, was on sale in the shops of various newsvendors, small booksellers, and even tobacconists in the town, and any of these would be liable if they merely sold a copy of the paper, though no jury would award heavy damages against an innocent vendor in such circumstances. The immediate need, however, was to clear my client's character—damages could be left to a second action against the proprietor of the paper when he returned from abroad. So I selected a tobacconist in the town, who I thought would be good for reasonable damages if they were awarded. I sent a clerk to his shop to buy a copy of the issue of *Norton's Truth* which contained the libel, and followed this up with a writ claiming £250 damages.

The case looked easy to win at that stage. The defendant did not plead justification. Had he done so, he would have aggravated the damages enormously, for there was not a tittle of truth in the infamous charges made against the plaintiff. The defendant, therefore, merely pleaded ignorance of the contents of the paper which he had sold, and expressed regret for the defamation contained in it. Nothing could be simpler; for so gross a libel the plaintiff was sure to be awarded substantial damages, especially as the tobacconist in handing the paper across the counter to the clerk had made the casual but very significant remark, "There's a pretty hot article in this number on B——" (naming the plaintiff).

On the very morning of the trial, however, the

plaintiff told me something which he had hitherto withheld because he had hoped it might not leak out, but about which at the last moment he became nervous. It was this : he himself was the proprietor of a bookseller's business, and he now admitted that early on the day of issue, before he became aware of the libel on himself contained in the paper, an assistant in his own shop had actually sold nine copies of it across the counter ! I realised at once that if this fact were brought out at the trial, the plaintiff would be lucky to get forty shillings ; he might conceivably have to content himself with a farthing ; for such a case of pot calling kettle black would never be tolerated by a jury. I could not afford to take any risk in the matter. Defendant's counsel would certainly know of the circumstance, and would, of course, cross-examine on it. It became, therefore, impossible to put the plaintiff in the box. But a plaintiff coming into Court to vindicate his character and avoiding going into the box where he would be subject to cross-examination was, in my experience at any rate, unheard of in a libel case, and he could not expect to get much damages. I had no choice, however, and happily the plaintiff's evidence was not necessary to prove his case. I called but one witness—the clerk who had bought the paper, and so proved the publication by the defendant. And then, to the chagrin of my adversary and the surprise of the Judge, I closed my case.

Fortunately the defendant had not been content with local counsel, but an advocate of brilliant attainments and great reputation in jury cases had been sent down from Wellington to take the defence.

He was a master in the art of ridicule—I knew no man better able than he to "laugh a case out of Court," if he had the material to make the laugh with. He did not call evidence. Proof that the plaintiff had sold nine copies of the paper would not have been admissible as evidence in chief, however destructive of the plaintiff's case, if elicited in cross-examination ; and my redoubtable opponent of course relied upon his last word to the jury. There appeared only one way to mitigate the consequences of the omission to put the plaintiff in the box. So I pretended to take the jury frankly and humbly into my confidence.

"Much will be said by my learned friend when he addresses you about the plaintiff's failure to go into the witness-box. Much ingenious speculation as to his reasons for not doing so will doubtless be indulged in. My friend will put forward many extravagant theories, and I am sure they will all be amusing—but they will all be wrong. I am going to be quite honest with you, and tell you frankly why the plaintiff did not go into the witness-box. Till this morning he had every intention of doing so. He came here ready to do so, and as you see, he has been sitting here beside me throughout the trial. Had the defendant been represented, as the plaintiff is, by a member of the humbler local bar, he would have given evidence without hesitation. But when this morning we learnt that my learned friend, with his reputation as a redoubtable and irresistible cross-examiner, had come down from the capital city to overwhelm my humble client and his humbler local advocate—well, gentlemen, *he funked it*."

I rather flattered myself I had done something by anticipation, at any rate, to take the sting out of my opponent's rhetoric; and so it proved, for the jury awarded £100 damages. When the proprietor of the paper returned from his trip he was promptly served with a writ for the same matter, but as my client's character had been fully vindicated and public interest in the matter had died out, the plaintiff gladly accepted £300 in settlement.

About the time I commenced practice at the Bar, the motor-car was replacing the horse vehicle in most parts of New Zealand. This produced an ever-increasing annual crop of collision cases, a highly lucrative branch of litigation. It was exceedingly difficult to persuade juries that drivers of motor-cars were ever in the right; but as during the earlier years I was usually retained for the plaintiff in these cases, I had no reason to complain. But although it was easy to get verdicts from juries, it was sometimes a difficult matter to get the Judge to uphold them.

I remember in particular a collision case in which my client, who was driving a horse-wagon, was run into by a motorist at the corner of D—— Street and E—— Street, one of the very worst corners from a motorist's point of view in the city. I got my verdict, and I think I was just about entitled to it, but only just. The Judge obviously thought I was not, and even the jury must have had some doubts, because the unexpectedly small amount of damages awarded showed clearly it was a compromise verdict. After the trial the defendant moved to set the verdict aside, on the ground that there was no evidence to support it. Here was my

real difficulty ; but the defendant's Counsel, I have always thought, helped me out of it by overdoing his part. He was a profoundly learned lawyer, the sort of man who in a legal argument never left anything unsaid. In his conscientious devotion to his client's interests, indeed, I often thought he said too much. I certainly thought he did on this occasion.

When I came into Court I was delighted to see the table in front of my learned friend stacked high with books of text-writers and reports. He cited at least twenty cases from the stack ; he was on his feet nearly two hours pounding away at his authorities ; but when he quoted a case out of Salkeld to support the proposition that the onus of proof was on the plaintiff, I could see that the Judge's patience had almost reached breaking-point. When at last my thrice-learned opponent resumed his seat, I heard the Judge sigh and saw a look of pained resignation on his face, which said as plainly as possible, " Now for the other one."

But when I rose he leaned forward and looked down at the Counsel's table ; I think he wanted to see how many authorities I had stacked in front of me, and when he saw that there wasn't a single book on my table, a gleam of relief lit up his face, and he said quite cheerily, " Ah, Mr. Alpers, I see no authorities in front of you ; I hope you haven't a masked battery under the table." But I wasn't going to let him off at once—he had no right to anticipate that I was going to bore him, for whatever my demerits as an advocate were, no one could ever charge me with overloading my arguments with authorities. So I said, " I propose, if your

Honour pleases, to deal with each and every authority cited by my learned friend and to use it against him." Now, if the man who cites irrelevant cases and, what is worse, recondite authorities for self-evident propositions is a bore, there is a worse bore yet: and that is the opponent who proceeds to "differentiate" the cases so cited. I thought it was time to let him off. "Now this volume of Bevan," I began, as I reached over and lifted it from my opponent's table, "this is the tall building at the corner of D—— Street. Here," picking up a calf-bound volume of King's Bench Reports, "is the fence on the opposite corner. This," holding in my hand a small octavo text-book on the Motor Regulations Act, "shows the position of my client's wagon just before the moment of impact." And so I proceeded, using one after another of the books which had been cited by my opponent, to build up on the Counsel's table a sort of "relief map" of the *locus in quo*, the relative positions of the vehicles, and the houses, street corners, and other elements in the collision. I quoted a few salient passages from the Judge's notes of evidence which supported the Jury's finding, and in something under ten minutes I sat down. I held my verdict, but the indignation of my opponent was good to see. It was long before he fully forgave me for my contemptuous treatment of his ponderously learned argument.

Of the many interesting matters in which I was engaged as Counsel for the Public Trustee, there was one which was a preliminary procedure to the passage of a Private Act of Parliament which was unique—I use the word *stricto sensu* and advisedly

—in the history of legislation. I do not think the Legislature of any country in the world except New Zealand has ever killed a man by Act of Parliament, and solemnly enacted that the said A. B. " shall be deemed to have died on the date of this Act coming into operation."[1] The circumstances which led to the passing of this extraordinary but very beneficent Act of Parliament were these :

A. B. was a farmer who owned a large sheep-station in Canterbury, close upon 30,000 acres of fine pastoral land ; he was, apart from this, a very wealthy man. He had a wife and six children, all of them adult, the eldest thirty-six years and the youngest twenty-four years of age. In 1896 he had been found lunatic, on inquisition by the Supreme Court of New Zealand, and for twenty-two years had been a patient in a mental hospital. His sheep-station in the meantime was managed by his committee. During the war years it suffered as did all large runs from difficulties in obtaining labour, and under our system of graduated land-tax was bearing an extremely heavy burden of taxation. It was felt that the longer retention of so large an estate of land in one holding was against the public interest, retarded closer settlement, and militated against the most beneficial use of the land. Four of the children were sons, brought up to farming pursuits. If the estate could be subdivided among them or sold in smaller blocks, it would be greatly to the advantage of the family.

Three years before A. B. had been found lunatic, at a time when no doubt could be thrown upon his soundness of mind and testamentary capacity, he

[1] New Zealand Statutes, 9 Geo. V, No. 1 Private.

had made his will—a very just and sensible document—in which, after providing for the payment of a large annuity to his widow, his property was divided equally among his children.

The family solicitor conceived the daring and novel expedient of promoting a private Act of Parliament to authorise the Supreme Court to grant administration of his estate on the assumption that he had died on the date of the coming into operation of the Act. The Bill was accordingly drafted, and in pursuance of the Standing Orders was referred to a Judge of the Supreme Court to investigate the circumstances, and to report to the Legislature whether or not the measure was a proper one to pass.

This is where I came into the matter. The Public Trustee, as Statutory Committee of Lunatics in the Dominion, represented A. B. in the proceedings before the Court. I acted as his Counsel and had no difficulty in satisfying myself that the Bill was a perfectly just and sensible measure, provided that an adequate sum were set aside for the maintenance of A. B. during any period that might elapse before nature completed what legislation had begun, the interval between his civil and his natural death. I must also be satisfied, of course, so far as one could be satisfied on such a matter, that the unsoundness of mind from which he suffered was incurable, and that there was, to quote the words of the preamble, "no prospect of the said A. B. ever again recovering any testamentary capacity." As to the first question, it was agreed that the sum of £9,000 would produce an ample income for the maintenance and comfort of the mental patient.

On my suggestion it was agreed to provide him with a good motor-car, and with a special attendant who should be a skilled chauffeur, for the patient was quite capable of deriving pleasure from drives and outings in the country where the hospital was situated. As to the prospects of recovery, one alienist had examined the patient and reported that he could not possibly recover. For more abundant caution I required that two other doctors, eminent experts in mental disease, nominated by me and acting under my instructions, should visit the patient and be afforded the fullest opportunity of inquiring into his condition. In their affidavits these gentlemen deposed that A. B. had been suffering for more than twenty years from chronic delusional insanity, that in recent years marked symptoms of senile decay had shown themselves, that though his physical health was robust, his mental condition was rapidly deteriorating. They committed themselves apparently without any hesitation to the positive opinion that in no event could he ever recover or even improve.

In these circumstances I took the responsibility, on behalf of the insane man, of approving the Bill which would have the effect of treating him as dead in contemplation of law, and would accelerate perhaps by many years the distribution of his property.

I had very grave doubts myself whether the Bill would pass through Parliament, but legislators in New Zealand have never been lacking in courage when invited to make experiments, however daring. The Government raised no objection to a Bill which, while it accelerated the distribution of the

estate, also speeded up the payment of a very large sum for death duties. The Bill was passed without difficulty and without fuss. It not merely enacted that A. B. should be deemed to have died on the date of the Act coming into operation ; it decided the place as well as the time of his death, for although the mental hospital was situated in the Otago Judicial District, it was enacted that he should be deemed to have died, and to have been domiciled at the time of his death, in the Canterbury Judicial District where his property was situated, and that the Act should be accepted as full and complete evidence of all facts necessary to lead to the grant of administration by the Court. Moreover, and this was highly important, for all purposes of administration, all the children of A. B. were deemed to be living at the date of this Act, and to have survived their father.

It is a tribute to the care with which the Bill was drafted that it contains a clause providing for keeping up the payment of premiums on the patient's life-insurance policies, so that these should not lapse in the interval between his civil death and his natural death.

And then, as though to confound the medical experts, " the said A. B. " recovered his reason ! He remained, I believe, a little eccentric upon minor points, but there was no longer any justification or excuse for detaining him in a mental hospital. He returned after more than twenty years to his old home to be welcomed by his wife and children. He recovered not merely his reason but his shrewd common sense. The provisions of the Act were explained to him ; he thought the scheme eminently

sensible, and it never seemed to occur to him to wish to disturb it. I don't know how long he lived after he came back to his old home, but I am told that he was often seen at the lodge gates waiting for the daily service-car to pass to get his mail-bag.

I am tempted to add this *bonne bouche* to my story, though I must frankly admit I cannot vouch for the truth of it: A relative informed me that not only was the old man's good common sense completely restored to him, but with it his sense of humour. One day when the paper brought the news of a suit in which a neighbouring squatter had been divorced for misconduct, he turned to his relative and said with a chuckle, "If I were to misbehave myself I couldn't be divorced, that's certain—I'm dead."

Chapter XIV

JUDGES I HAVE KNOWN

THE first Judge of whom I have any recollection is the late Mr. Justice Johnson. He had ceased to be, long before I became a member of the legal profession, but he was a familiar figure in the life of the Colony in my boyhood. He was appointed to the New Zealand Bench from the English Bar. He had never practised in the Colony, but was, on his arrival, in our homely phrase, "a new chum." He came among us full of a sense of the dignity of his office, and evidently expected to find all the pomp and circumstance that surrounds an English Judge transplanted here. But he soon found life in the new settlement simpler and less ceremonial. Judges in New Zealand do not wear scarlet robes or even full-bottomed wigs; black silk gowns and bench wigs are here the vogue. When a Judge in New Zealand opens the sittings in a town where he goes on circuit, he is not driven from his hotel to his Court in a gorgeous coach drawn by horses richly caparisoned, nor is he attended by javelin men. He usually walks from his hotel with no other attendant than his associate or private secretary. If the distance be far, he hails a taxi like an ordinary citizen. It is not till he actually enters his Court and takes his seat upon

the Bench that any ceremonial is observed. But while a Judge in New Zealand is surrounded with little pomp, neither his personal bearing nor the ceremonial procedure of his Court is, I venture to think, lacking in dignity.

Shortly after Judge Johnson arrived in the Dominion, he proceeded to Napier to open the circuit sittings there. This was, I think, in 1860 or 1861. The Sheriff had heard rumours that the new Judge was a stickler for form and ceremony. He managed to hire from a livery stable quite a presentable open carriage drawn by two white horses which looked more or less a pair. He had rescued from the bottom of a sea-chest, where it had lain since his arrival in the Colony, a frock coat. He had even managed to procure a top-hat for the occasion, and with a pair of white gloves and a freesia in his buttonhole, the Sheriff thought he had done himself rather well.

Not so the Judge, however. When the Sheriff presented himself at the door of the hotel and proceeded to show the Judge into his carriage :

" Where are the javelin men ? " asked his Honour sternly.

The Sheriff explained that we do not have javelin men in New Zealand.

" See to it when next I attend the Assizes in your town that proper respect is paid not to *my* dignity, but to the dignity of my office."

Where the poor Sheriff had secretly hoped for a compliment he received a snub ; but he was in due course avenged.

Six months later the Judge came again to Napier to hold sittings. He had by this time learned

something of the ways of colonials, and no longer expected javelin men, but he got them—with a vengeance. It happened that a company of travelling barnstormers were playing a season of melodrama in the town during assize week. The Sheriff engaged four men of the company to take part in the opening of Assize. They were rigged out in tawdry finery, theatrical "properties," with helmets and breastplates of tin, and with buskins of tragic impressiveness; they carried javelins of lath, the blades pasted over with tinfoil. Never were seen such sorry-looking scarecrows since Falstaff mustered his ragged regiment at the battle of Shrewsbury. The people in the town had got wind of what was toward, and a small crowd had gathered in front of the hotel. When the Judge came out to enter his carriage, they raised a cheer, not without its derisive note. That was the first and last occasion upon which a Judge in New Zealand was attended by javelin men.

The Judge soon learned to adapt himself to colonial life, and, in fact, became very popular socially in the circuit towns he visited. He was musical, and always took an interest in concerts of local musical societies. The popular form of entertainment in those simple days was Penny Readings, as they were called—mixed programmes of orchestral music, choral and solo singing, readings and recitations. On several occasions during the sixties the newspapers in Napier report the Judge as giving readings himself at these functions, from Dickens and Thackeray, and even responding to what the paper called "vociferous encores."

A young Englishman called Nesfield was the

proprietor of a livery and bait stable in Napier in the early sixties. He was a gentleman who had been sent out, as were so many of his class in those days, to cool his youthful ardour in the Colonies and learn to live within his means. He had a pretty taste in horseflesh, acquired on Epsom Downs and from following some of the best packs in England. But as his income did not permit him to indulge his taste in horseflesh by keeping a private stable, he took to the " livery and bait " business, and so was never short of a good mount for himself when he wanted it. In those early days more than half of the proprietors of livery stables in New Zealand were gentlemen who had taken to that business from the same motives as Nesfield. It never occurred to anybody to suggest that keeping horses and traps for hire placed a man under any sort of social disqualification.

Nesfield had imported a hansom-cab, the first of its kind, I believe, to be seen anywhere in New Zealand. It was, of course, quite unsuited for driving about the stiff hills of Napier, but Nesfield did good business with it, no doubt because of its novelty.

On one occasion when Judge Johnson was holding a sittings of the Court in Napier he was invited to a ball given by a Colonel L——, so he ordered Nesfield's hansom to drive him and his associate. But Nesfield had a card for the ball himself ; why not combine business with pleasure ? Why waste the time of one of his men to hang about the Colonel's stables all night in order to drive the Judge back. So he put on a long overcoat—we called them ulsters in those days—mounted the dickey, and

himself drove the Judge and his associate to the ball.

Towards midnight Colonel L—— noticed the Judge, who did not dance himself, looking, as he thought, weary of the festivities, so went up to him and said, " Please do not stay on out of compliment, Judge ; I know you have a heavy day in Court before you to-morrow."

" Thank you," said the Judge ; " I really do want to go, but I can't get away : that damned cabby of mine is dancing with your daughter."[1]

In those days the finding by the Grand Jury of " true bill " or " no bill " on an indictment was made known with some little ceremony. The person indicted was placed in the dock, then the Grand Jury's finding was announced by the Sheriff by solemn proclamation. An old " lag " with many convictions against him in Australia had arrived in New Zealand to practise his calling—burglary. He was committed to stand his trial at the sittings in Timaru before Mr. Justice Johnson. There was a strong *prima-facie* case against him, but the Grand Jury was stupid about it, and threw out the bill of indictment. The accused was placed in the dock, and the Sheriff duly proclaimed " No Bill." This procedure was a novelty to the accused, whose experience hitherto had been limited to Australian Courts. He was a little hard of hearing, apparently, and not catching the words of the Sheriff's proclamation, he blurted out " Guilty, your Honour." A titter went round the Court.

" How dare you ? " said the Judge in his sternest

[1] Nesfield tells this story himself in a bright book published many years ago called " A Chequered Career."

tones—" how dare you say you are guilty when the gentlemen of the Grand Jury have found no bill against you ? How dare you ? "

The astonished burglar, embarrassed and apologetic, was promptly removed from the dock, but the usher's stentorian " Silence in the Court " could not suppress the laughter.

But though Mr. Justice Johnson's sense of humour and appreciation of the spirit of colonial life saved him from any repetition of the javelin-men episode, he remained to the end a stickler for decorum, and was particularly severe upon members of the Bar who appeared before him improperly robed. On the trial in Christchurch of a civil action, a gentleman, whom I will call Mr. Black, was Counsel for defendant. The case was not expected to last more than an hour or two, and as Mr. Black was engaged in the afternoon to play lawn-tennis, he ventured to appear in Court in a pair of light grey flannel trousers. In his locker in the robing-room he kept the conventional black coat and waistcoat, and with these and his stuff gown held together around him, he hoped the light-coloured trousers would escape observation. When the case was called :

" I appear, may it please your Honour, for the defendant," said Mr. Black.

The Judge stared blankly at him. " Is the defendant not represented by Counsel ? " asked his Honour.

Mr. Black raised his voice, thinking he had not been heard. " Yes, if your Honour pleases, I appear."

" Who appears for the defendant ? " said his

Honour, still asking for information. "I cannot see any Counsel appearing for defendant."

Counsel for plaintiff sought to come to the rescue. "My learned friend Mr. Black, sir, represents the defendant."

"You must be mistaken," said the Judge, with freezing courtesy. "I cannot see Mr. Black. I am sure he would never present himself in *my* Court in light grey trousers. The Court is adjourned for fifteen minutes to enable the defendant to be represented."

So poor Black did a lightning change with his clerk, who fortunately happened to be wearing dark trousers, and when the Court resumed, Mr. Black was duly "seen" and the trial proceeded.

I personally think it is a matter for regret that some of Mr. Justice Johnson's successors on the Bench, and I include myself among these, do not emulate his strictness in such matters. Since the abolition of articles in New Zealand, young men enter the profession at times without much opportunity of learning what is "good form," and what is not, in matters of that sort. I have seen able and even brilliant young members of the Bar, who certainly ought to know better, pass in the street a Judge to whom they are personally known without lifting their hats, quite ignorant obviously of the rule in such matters, and quite oblivious of the fact that in breaking that rule they derogate not from the Judge's dignity, but from their own. I have noticed them look quite surprised when a Judge has failed to "see" them under these circumstances. But I have observed them look even more surprised when they have met me; for I

usually employ the simple expedient of raising *my* hat to them, and on our next meeting I find the hint has generally been taken.

I have never been able to understand why so many Counsel in New Zealand find it too much trouble to keep a morning coat in their robing locker for use in Court. They appear sometimes in a dark blue or brown sac suit. That is bad. But infinitely worse is the slovenly habit one notices in some Courts of compromising with the colour convention by wearing a black alpaca coat under their gowns. I often wonder why the Law Societies in New Zealand cannot persuade their barrister members not to appear in Court in the attire of an ironmonger's assistant.

The Judge whom I knew best was the late Mr. Justice, afterwards Sir John, Denniston. During more than half of my twenty years at the Bar I was constantly in his Court. My first appearance before him was in the case of *Warner's, Ltd.* v. *The Lyttelton Times Co., Ltd.*, to which I have made reference in a previous chapter. I was, as I hoped, decently and properly robed—wig, bands, gown, and even " blue bag " had just arrived the week before, spick and span, from Ravenscroft's. Whatever he might think of my law, the Judge would, at any rate, be satisfied with my clothes. But, alas! he wasn't. The " knuts " of that day—the word had not then been invented : " dudes," I think, was the slang of the moment—used to wear double collars —what we called stand-up-turn-downs. I ought to have realised that these were as much out of place with barristers' robes as they would be with evening clothes, but I appeared in Court in a " stand-up-

turn-down " collar. When the Court adjourned, the Judge's associate, who happened to be a personal friend of mine, frankly went a-fishing, hoping to extract from his Judge some words of commendation on the maiden effort of his friend; but all I got was this message: " Tell your friend Alpers that I shall be glad if he will not appear in *my* Court in future wearing a barmaid's collars." This could scarcely be called encouraging.

I am glad to say that Judge Denniston's critical attitude towards me did not last long. There were in the first few months some painful " breezes in Court," as the newspapers like to call them; but once I discovered the right way to deal with him we became fast friends, and there was no more trouble. Whenever a " breeze " had occurred, and he had scarified me, as he sometimes did, too severely, I used to seek an interview with him in his chambers, and then and there frankly, and I fear sometimes heatedly, make my protest. These interviews always ended in the same way—mutual expressions of regret for the misunderstanding, a quip or a pleasantry from one or the other, and complete friendliness restored. When once I discovered, as I did by accident, that in spite of the sarcastic chastisement he meted out to me he really rather liked me than not, and when once I realised that he was at heart one of the kindest men I had ever known, there ceased to be " breezes in Court " as far as I was concerned.

Judge Denniston was not only a sound lawyer but a sound scholar. In his summing-up to a jury, or in an oral judgment delivered without preparation, he was sometimes distressingly parenthetical.

As Thomas Carlyle would have said, he used to take a long dive with the verb in his mouth, and come up at the end without it. But his written judgments are models of lucid English prose. Both in speech and in writing he had, I used to think, a wonderful felicity in the choice of words. I have seldom known anyone to whom the *mot juste* came so readily. I remember on one occasion arguing a complicated case before him for several hours one afternoon. The argument presently developed into a dialogue—as it always did when the Judge was really interested—and I got right away from my notes. I had not finished when the Court adjourned, and when I resumed my argument next morning I really had no very clear idea how much of the ground I had covered. I apologised for possible repetitions. I feared I had presented his Honour the day before not so much with an argument as with the *disjecta membra* of an argument. He promptly set me at my ease : " You will find that the *disjecta membra* of your argument are all on my notes, and have, if I may say so, articulated themselves in my mind." *Articulated*—I thought it was perfect.

Occasionally his fondness for literary allusion got him into trouble. A fussy little barrister, of a type seldom seen outside the pages of Charles Dickens, was my opponent in a witness action. He was outlining the evidence he was about to lead, and said, " I propose to call next a most important witness, Mr. Mahoond." The unusual name evidently tickled the Judge's ear, as it did mine, and he said in an aside to me from the bench, " Not, I hope, the false Mahoond." The aside was unfortunately

overheard, and the fussy one positively spluttered with indignation: "Most unmerited observation, your Honour—I must protest. He is a most reliable and truthful witness, a highly respected farmer, much esteemed in the district," and more to the same effect.

Nothing the Judge could say would stem the tide of the fussy one's indignant protest. The Judge assured him that his remark was merely an allusion to Spenser's "Faerie Queene," of which he felt sure Counsel must have heard; but the little man continued to splutter his protests, and the Judge was finally compelled to order him with some sternness to resume his address.

Judge Denniston never found it easy to suffer fools gladly. On country circuits when country practitioners, ill-equipped and ill-prepared, used to appear before him, his temper was sometimes severely tried. This fact, no doubt, accounted for the misunderstanding of a telegram on one occasion. He had been holding a sitting at Westport, the town where the famous Westport coal comes from, coal on which the H.M.S. *Calliope* steamed out of Apia Harbour in 1889 in the teeth of the hurricane. Westport has a bar harbour, and when the wind is southerly the small steamers trading to the port cannot always cross the bar, and are sometimes detained for several days. The Judge had intended to proceed by sea to Wellington, where the Judges were to assemble on the following Monday for the sittings of the Court of Appeal. But a southerly gale compelled him to change his plans, and to adopt the longer route overland to Nelson. So he telegraphed to the Registrar of

the Court of Appeal in Wellington: "Cannot arrive till Tuesday. Bar here impossible." The Registrar laid this telegram before one of the other Judges, esteemed for his profound knowledge of law rather than for his sense of humour. "I am not surprised," was his comment; "my brother Denniston has often told me that those West Coast lawyers are a cantankerous lot."

Judge Denniston was not only a just Judge but a merciful Judge. If he could find any reasonable excuse for granting probation to a first offender, or giving him some punishment short of herding him with criminals, he never failed to do so. I am afraid those of us who practised before him at the criminal Bar occasionally took unfair advantage of what we knew to be his merciful weakness in this direction. I remember a particularly bold case of cattle stealing in which I was retained for the defence. It occurred in the first year of the War. Judges all over New Zealand were getting a little tired of what had by that time become a stock plea: if his Honour could see his way to grant probation or order the prisoner to come up for sentence when called upon, he would forthwith enlist. Judges were inclined to be sceptical of this new patriotism in criminals. At the same time we wanted men, and a resourceful and daring criminal often made a devil-may-care and dashing soldier.

The young man I was appearing for was a first offender, but his offence was of a kind for which probation was not usually granted. He was working on an up-country station, in receipt of the high wages ruling because of the shortage of men. Drink and gambling had got him into trouble, and

he found himself in the clutches of an unscrupulous bookmaker. So he mustered some fifty head of cattle off the "back country" of a neighbouring farmer, and, with the aid of a good team of dogs, drove them by devious ways on to the plains, reached D—— on the very day of the monthly cattle sale, sold the beasts, and got away with a substantial cheque. In less than a month the police got him, and he found himself the inmate of a prison. I rather think his first feeling was one of surprise. That at least was the impression I got when, bail having been granted, his old father brought him along to me. The big wages he had been earning had turned his head; associating with flash bookmakers, "chewing beer and eating cigarettes," as his father put it, had been his undoing. Could I possibly get him probation? I had told him that his only hope lay in a plea of guilty and prompt enlistment; but when I looked at him I doubted gravely if he would be accepted. Blear-eyed with drink, with a blotchy complexion and narrow-chested, he looked poor material for a soldier. And yet he had been a hill-country shepherd; he had some excellent testimonials from earlier employers, and must have been a hefty young fellow before he allowed himself to run to seed. At any rate, I sent him straight away to the recruiting office, where he was accepted, subject, of course, to medical examination.

But sheep, horse, and cattle stealing are naturally not offences to be treated lightly in a pastoral country, and I was quite unable to cite any precedent for granting probation for such a crime. The Judge for once was obdurate. He could enlist, said the

Judge, when he came out of prison—the country would probably still be wanting him. Unfortunately only shortly before this Lord Kitchener had predicted a three years' war. I urged my point further, but I could not move the Judge.

"We don't want to send away a New Zealand army composed of criminals. There are, thank God, still plenty of fine young men willing to serve their country."

And then I fired my last shot. The accused was a Lowland Scot—his forbears had lived for generations on the Border; cattle-reaving was in his very blood. I begged the Judge to remember that it had been at one time regarded in Scotland as an honourable calling. Knowing his admiration for the Waverley Novels, I asked him if there was in all fiction a manlier type than Rob Roy? That did it.

"Really, Mr. Alpers, you are incorrigible."

And when the Judge said that I always knew I had gained my point. "You will be telling me next that some of my own forbears were cattle-reavers. I think I am going further than I ought, and setting a thoroughly bad precedent, but I'll give him probation if he proves to be medically fit for service."

To my great delight he was accepted, and went into camp at Trentham. On each of his week-end leaves when he came down to Canterbury to visit his people he used to come in to see me, ostensibly to show his gratitude, in reality to show his "fitness." I never saw such a remarkable change in three months. All traces of beer and nicotine had vanished from his system; his eye was clear

and his glance fearless. He had the silken skin of a trained athlete ; you could have cracked walnuts on his cheek-bones. As Masefield says in his wonderful description of the Australian and New Zealand Army Corps just before the landing at Gallipoli, " They were in the pink of condition and didn't care a damn for anybody."

Ultimately, no doubt, conscription would have caught him, but that was still a long way off in New Zealand. He left, I think, with the 7th or 8th Reinforcement. When he came to bid me good-bye on his final leave, he looked a magnificent specimen of manhood. At the door of my room he turned, and, giving me a grip of the hand that made me wince with pain, he said, with a curious note of hesitation, " Before I go I want to say something to you that you mightn't understand."

" Out with it," I said, " and chance it."

With a final grip he said, " I'm damned glad I stole them cattle."

I saw afterwards that he got a D.C.M. on the Peninsula, and later, in France, he stopped a bullet on Messines Ridge.

For nearly fifteen years I practised in Judge Denniston's Court. Before taking leave of him, let me say this : his intellect was above all things else alert ; he was a sound lawyer, a polished scholar, a brilliant wit. His love of justice amounted to a passion. And best of all, he was a man of infinite kindness of heart.

. . . . . .

Of the other Judges before whom I occasionally practised during my career at the Bar, the one who stands out as the most distinct and interesting

personality is the Right Hon. Sir Joshua Strange Williams, P.C. Fortunately most of the Judges of whom I had personal experience are still alive and even in office, so they are necessarily excluded from these reminiscences.

The very name of Judge Williams is redolent of the law. He was a son of Joshua Williams, Q.C., the great conveyancer and historical jurist, whose " Law of Real Property " has been for so long the classical authority upon that topic. One felt instinctively that New Zealand was honoured in having such a man as a member of its judiciary. It was exceptionally interesting occasionally when some nice point in Real Property Law was being discussed before him to hear him say that he had had the advantage of referring to a marginal note in his father's handwriting in some early edition of his book. During his later years the family " mana," which seemed to attach to Williams J. as a real property lawyer, was enhanced when his half-brother, T. Cyprian Williams, published his great work on the " Law of Vendor and Purchaser."

When Mr. Joshua Strange Williams arrived in New Zealand in 1861 he took up his residence in Christchurch and threw himself with great zest into the public life of the little settlement. He was an original member and the first Chairman of the Board of Governors of Canterbury College, and had much to do with shaping the ideals and destiny of the new University. He was admitted to the New Zealand Bar and practised for some years in Christchurch ; but when the Land Transfer system (the Torrens Act) became law in the Colony, Mr. Williams was appointed District Land Registrar

for Canterbury. In 1875 he was appointed a Judge of the Supreme Court, and entered upon that long and distinguished career which ended in the Privy Council. He was one of the few members of the Colonial Judiciary whose fame as a lawyer extended beyond the confines of his own Colony.

He was not the sort of man round whom stories gather. He was far from being a dry-as-dust lawyer; he had a droll and sometimes caustic humour which was entirely his own; but anecdotage, which clings to some men, avoided him.

There is, however, one story which is characteristic. It happened that he was several years on the Bench before it fell to him to sentence a prisoner to death. Laymen persist in thinking that that is a dreadful responsibility. It has not yet fallen to my lot to do it, and so I can't say how I shall feel under such circumstances, if they arise; but logically it ought to be the sentence which gives a Judge least concern, for he has no option or discretion in the matter. Once a jury brings in a verdict of murder, the sentence to be pronounced, and even the very formula in which it is expressed, is prescribed by statute. It is a pity that we have to go through the medieval ceremony of putting on a black cap—that is rather gruesome, I have always thought, and a melodramatic detail in questionable taste. But apart from that the Judge has merely to say, in the words of the statute, "You shall be taken to the place of execution and there hanged by the neck until you are dead." The Judge who harrows his own feelings and those of his hearers and the accused by maudlin moralising has only himself to thank. If he pronounces the formula in

a dry level voice, he will probably get through the ordeal without any emotional strain. It is a very much more serious matter when some first offender is before you who has ruined a promising career by a lapse into crime; when perhaps it is a woman who has fallen from honesty, or when it is a middle-aged man whose wife and family have shame and sorrow brought upon them. Then the question of what sentence to mete out, whether probation or a term of imprisonment, long or short, involves a very grave responsibility that may well give one sleepless nights. But in the case of the death sentence, it is upon the executive, not upon the Judge, that the whole responsibility of the prisoner's fate devolves.

It so happened that Judge Williams had to pass sentence of death for the first time on a day when his wife was giving a large dinner party at his house, arranged some time before. In the drawing-room the guests were assembled before the Judge came downstairs, and his wife, much agitated and upset by what had occurred, begged them to be very guarded in their conversation, and make no allusion even the most distant to Courts or trials, lest they call to his mind the " dreadful experience " of that afternoon.

That was not a very promising beginning to a dinner party. " The weather " saw the guests through the soup, but that topic would not fill out the whole evening. The bolder spirits, with the fish, tried the latest play, or even the best score at golf on the local links. But it was a very dull party, as bad almost as Wordsworth's " party in a parlour, all silent and all damned." With the

entrée it flashed upon the Judge's mind what was the matter. Raising his voice and addressing his wife at the foot of the table, he said, "My dear, I had the very great pleasure this afternoon of consigning an unmitigated scoundrel to his doom."

And so that dinner party was quite a success—after all!

. . . . . .

The late Sir John Salmond, many years ago, told me a story which I have always regarded as one of the best legal stories I have ever heard. He did not tell me where it came from; I have never heard it from any other source, nor do I know of anyone who has. I have read in my time many books of legal reminiscences, good, bad, and indifferent, but I have never seen that story anywhere in print. Is it a chestnut? Or is it by some strange chance a good story that has escaped the anecdote-collectors? I determine to risk it, and here it is:

It is a story of the seventies, when the fusion of law and equity took place and occasioned so many strange "mix-ups" in the work of the Judges. Elderly gentlemen, accustomed all their lives to applying equitable doctrines in suits where they only gathered the fact from affidavits, found themselves suddenly confronted with actions at *nisi prius*. They had to distinguish the true from the false as told by witnesses in the box in the language of a workaday world instead of in the pedantic phraseology of equity clerks.

An elderly Judge sat with a jury for the first time in his life to try a particularly brutal murder case. The deed had been done with an axe, and one might reasonably have expected the case to smell of blood.

But there was no allusion to blood or blood-stains from beginning to end. This was the Judge's summing-up:

"It must have struck you as strange, gentlemen, that in this case, where it is alleged that the victim was done to death with an axe, there is so little allusion in the evidence for the prosecution to blood or blood-stains. There is, indeed, one sentence you will remember which seems to me most significant—but, of course, gentlemen, its significance is entirely for you. I merely draw your attention to it. And it is perhaps my duty to remind you that counsel for the prosecution does not appear to regard it as important, for nowhere does he advert to it throughout his exhaustive and, if I may say so, very able analysis of the evidence. But you will remember, gentlemen, that one of the witnesses deposes to hearing the accused, when he was in the act of getting out of bed the morning after the murder was committed, use these words to his wife: '*Maria, chuck us over that bloody shirt.*'"

Chapter XV

CROSS-EXAMINATION

OF all the arts which the advocate must acquire if he would attain success, the most difficult is the art of cross-examination. To lawyers this is, of course, a mere truism ; but very few laymen understand or appreciate the value of cross-examination as a means of eliciting the facts ; the majority regard it rather as an ingenious device invented by lawyers for pestering witnesses. When I was about to enter the legal profession I asked a friend—an able and experienced advocate—if he could give me any useful advice on how to cross-examine. " Yes," he said, " the same as *Punch* gave to people about to marry—don't."

I trust I am not embarking upon a didactic dissertation on the art of cross-examination. For laymen among my readers would find that dull, and lawyers pronounce it trite. Even if I set myself to compile a set of " Rules for the Guidance of Cross-examiners," I fear they would be of as little use to aspiring advocates as " Foster " is to novices at bridge or " Vardon " to beginners at golf. For everything depends upon the temperament of the advocate ; his knowledge of life and his understanding of human motives, his grip of facts, his sensitiveness to the " atmosphere " of a

case, or his ability to create one. No accomplishment comes amiss to him. He should learn to assume the neutral face and toneless voice of a poker-player for use upon occasion; he should know how to "bid" up to but never beyond the value of his hand, as at auction bridge. He must "follow through" like a golfer; keep "on the ball" like a Rugby forward, and at all times and in all circumstances be a sportsman and "play cricket."

But if "wise saws" be little help, "modern instances" may, at least, be some. I propose, therefore, to give some instances of "how to do it," and "how not." Most of these are drawn from my own experience; the rest from that of Counsel in Courts where I have practised. I shall carefully avoid what is technical or recondite, lest I bore those readers who are not lawyers.

And first of "cross-examination to credit." This is really but a minor and quite subsidiary branch of the subject; but laymen often think it embraces the whole, no doubt because the gross abuse of it in the past has drawn so much public attention to it. The practice of putting questions to a witness about his private life or discreditable episodes in his past in order to throw doubt upon his testimony was at one time employed in many cases with a ruthless and wanton disregard of the feelings of witnesses. But though, until recently, it often resulted in cruel torture of the witness, nowadays happily the consequence is more frequently the undoing of the Counsel who is guilty of it.

I was so fortunate in my very first case as to receive a sharp lesson which I never forgot.

It was my first appearance in a Court—if I except

a " first appearance " in another sense when I was fined ten shillings and costs for riding a bicycle on the footpath. I was Counsel for the Crown in a prosecution for indecent assault. A senior detective was in charge of the case on behalf of the police, and, raw novice that I was, I was naturally disposed to rely much upon him and to act on his information and suggestions. This man, as I afterwards found, was unfortunately of the sleuth-hound type.

A witness called by the defence, a young man of twenty-four or five, had just finished his evidence-in-chief. " He was once convicted of theft," whispered the eager sleuth at my side—" ask him about it." Very foolishly I did ; and the witness answered, in obvious distress, " Yes, twelve years ago, for stealing a toy watch." " Then you must have been a mere boy at the time," said the Judge.

" I was not quite thirteen."

I did not venture to look at the Judge or the jury ; I could *feel* what they were thinking. I made the best amends I could to the unfortunate witness, and firmly resolved, " Never again ! " And I never have.

I should like to record here that this detective was of a type very seldom met with in the police force of New Zealand. In my twenty years at the Bar, in the course of which I was Counsel in a large number of criminal cases, I never once found occasion to attack a police officer in the witness-box, or to suggest in my cross-examination that he was guilty of perjury, of " twisting " the facts, or of " third-degree " methods in extracting a confession.

In a libel action in which I acted for the plaintiff,

defendant's Counsel, by a rash and ill-judged question, put a considerable sum into my client's pocket—and, incidentally, some pounds into mine. The defendant had written a grossly defamatory letter about my client—a spiteful and malicious lie. The wronged man acted with great moderation. On the very morning of the trial his solicitor reiterated an offer already made weeks before to accept a frank apology and some small sum for costs to cover the issue of the writ, but the offer was refused.

In the course of his cross-examination, Counsel for defendant, acting obviously under the instructions of his disagreeable client, who sat beside him and " egged " him on, asked the plaintiff if it was not a fact that he lived apart from his wife. That question was about as bad as a question could be ; it was entirely unrelated to the matter of the libel. In any case, justification had not been pleaded, and the circumstances in which the plaintiff's wife had, in fact, left him many years before were such that no blame or discredit attached to him in the matter. But my adversary's blunder was even worse than that, for it so happened that both the Judge who tried the case and the gentleman who acted as foreman of the jury had been at school with the plaintiff, had known him all his life, and were fully conversant with the circumstances of the tragedy in his domestic affairs.

I, of course, " straafed " the defendant in my best vituperative style ; but I might have spared my breath, for the Judge in his summing-up did all that was necessary ; the foreman in the jury-room probably did rather more, for the verdict was for the full amount claimed—£250.

My client, I remember, was an " Inspector " in the service of the Government, but I have quite forgotten what he inspected. For in this little country we have inspectors of everything ; factories and fowl-roosts, boarding-houses and bee-hives. On a moderate computation there are five times as many inspectors to the square mile in New Zealand as in any other country on the globe, and at the present rate of increase the members of the Public Service will soon outnumber the rest of the population.

A great deal of perjured evidence is, no doubt, given in Courts ; but the amount of wilful perjury is much less than the public imagine. Inaccurate observation, unconscious bias, faulty memory, and what psychologists call, I believe, " obstructive association of ideas " account for much the larger part of the false testimony one hears from the box. Witnesses, even the most honest of them, are carried away by their keen love of a contest. The party on whose behalf they are called becomes their " side," and, not unnaturally, they want their side to win. That wish increases in intensity as the excitement of the trial proceeds ; it reaches its maximum when the witness is under cross-examination, and if the cross-examiner's manner be aggressive, suspicious, or bouncing, the witness becomes, in spite of himself, a confirmed partisan.

I recall a striking example of this kind of partisanship in a licensing prosecution. It happened many years before I joined the legal profession, and I am indebted to a solicitor engaged in the case for the following account of it.

The proprietor of the leading hotel in one of the

chief towns in New Zealand was prosecuted for Sunday trading. His house was situated on the corner of a main street, and a side street at right angles to it. From this side street a door opened into a public bar. A "Vigilance Committee" of the Prohibitionist party had, it appeared, been watching the hotel for several Sundays in succession, and had kept tally, so they said, of the people who entered and emerged from the hotel by this side door. The "Vigilants"—a dozen or more of them, mostly women—had been watching from the windows of a building immediately opposite. They were absolutely agreed as to the number of persons who had entered by the side door on each successive Sunday and even during each hour of each Sunday. They were all of them eminently respectable people, consumed with zeal no doubt, but quite obviously honest.

The case for the defence was startling. Two surveyors gave evidence; they produced plans made by them independently which proved conclusively that the side door was not visible from the observation windows. The "Vigilants" had carefully counted the number of persons who turned into or came out of the *side street*, and had drawn the inference, no doubt quite correctly, that they had also entered and come out by the *side door*. Hot on the scent as they were, they believed they had seen what they came there to see, and what, in their enthusiasm for "the cause," they wanted to see.

Before Counsel can hope to elicit the real facts of a case from a witness, he must of course know them himself, and not only know them, but know them backwards. If it be a "running-down"

case, he will not be content with poring over "locality plans"; he will visit the scene of the collision and see all he can for himself. If it be a case involving expert knowledge, he will visit the laboratory of his own expert and watch him make his experiments; go to the factory and see the process, whatever it may be, actually carried on; tramp over the farm and observe for himself the state of disrepair his client complains of or is charged with.

I lost many cases during my twenty years at the Bar, but I can honestly say I never lost a case through lack of preparation. In New Zealand all the preliminary "spade-work" falls upon counsel, because of the fusion here of the two professions of barrister and solicitor. Most of the litigants for whom you appear in Court are your own clients or clients of your solicitor-partners. They expect you to give your personal attention to every detail of their case. You are a sort of Pooh-Bah: the client consults you in your capacity of solicitor; you then, as it were, "state a case" to yourself for opinion in your capacity of barrister; if you advise yourself that an action will lie, you proceed to brief yourself as counsel for plaintiff. It is all very confusing; but it has at least this advantage, that by the time you get to Court you are master of every detail; you know all the facts, and you hope you know all the law that applies to them. You do not depend upon a neatly engrossed "brief" handed you the day before by a solicitor's clerk. If you are so fortunate as to be furnished with a brief at all, it is one you have dictated to your own stenographer; more often your only "brief" consists of pen-

cilled notes on odd scraps of paper half of which you find have been mislaid by the time you get to the Court. But your case is in your head. And that, I usually found, was the best place for it.

The most technical case I was ever engaged in was an action for £2,000 damages against a surgeon for alleged negligence in leaving two "swabs" in a patient's abdomen. There was no doubt about the swabs; they were there all right, for, three weeks after the operation, they insisted, after the manner of swabs, in forcing their way out. The only question was: were they surgical swabs left in the cavity by the surgeon at the time of the operation, or were they dressing swabs left in the wound subsequently by a nurse when swabbing it out? I spent the best part of a week reading up treatises on abdominal operations; I had two surgeons "coaching" me with the aid of innumerable diagrams, and even plaster-of-Paris casts of the human interior. But I still felt fogged and "moidered" about the case. It was not till I had myself seen the identical operation performed —fortunately there was one done at a hospital in the town a week before the trial—that I at last felt I had mastered the case. Watching a major operation for half an hour, with the fumes of ether and chloroform in one's nostrils, is not a job one hankers after; but nothing short of this, I felt assured, would have qualified me for the complicated and highly technical cross-examination of the plaintiff's witnesses. The case lasted four days; nearly all the witnesses were doctors or nurses, and the evidence was very difficult to follow. The danger was that the jury would brush aside all

the technicalities, as juries will, and remember only that the plaintiff was an attractive-looking woman who had endured and was still enduring great suffering. Their verdict was in defendant's favour ; but my defence, sound as it was, might easily have miscarried had it not been for that very unpleasant but quite invaluable half-hour spent in an operating-theatre.

Many anecdotes and witticisms pass current among judges and lawyers at the expense of the "expert witness." In large cities, no doubt—particularly in America, as one gathers—there are to be found doctors, engineers, and other men of science who find the retaining fees they receive from insurance and railway corporations a more certain source of income than the emoluments of private practice. They gradually specialise as "testifiers," and are tempted to become, perhaps unconsciously, professional partisans. They are infected in time with a subtle and insidious mental disorder, not yet classified by alienists, for which I can think of no better name than "insurance mind."

I remember on one occasion I was urging a client, the manager of an insurance company which specialised in "builders' risks," to agree to a settlement of an accident claim for £250—the sum which plaintiff's solicitor had told me would be accepted. It was a neurasthenia case, and every insurance manager thinks neurasthenia is only a euphemism for malingering. My client was obdurate ; not a shilling more than £100 would he pay. . . . Nettled at his obstinacy, I said to him :

"You are simply impossible to argue with ; you

must be suffering from 'insurance mind' in its most aggravated form."

"What's that?" he inquired, in all innocence.

"I really believe," said I, "that you think every builder's workman who falls off a scaffolding and breaks his neck does it deliberately to spite your company."

"Well," he answered, "I don't know: *I wouldn't put it past some of 'em.*"

The jury awarded the plaintiff £500, and I found it difficult to conceal my satisfaction when I told my client of the verdict.

My own experience of expert witnesses has certainly not confirmed the hard things said about them by cynical *raconteurs*. Perhaps this is explained by the fact that cases calling for expert testimony are of infrequent occurrence in a small community, and that there is little scope here for the professional partisans of the type I have referred to. But a better reason, I think, is the very high standard both of personal honour and professional qualification which fortunately prevails throughout the medical profession in New Zealand.

But I did come across one expert witness—a medical man at that—who displayed in the box an interesting combination of fraud and impudence. He was giving evidence on behalf of a plaintiff who claimed a very large sum of money by way of damages for an alleged injury to the spine—lateral sclerosis, he called it. I was not actively engaged in the case, but held a "watching brief" on behalf of an insurance company under contract to indemnify the defendant. The medical experts to be called on behalf of the defence were men of the highest

attainments and integrity, and they were all three firmly of opinion that the plaintiff had no sclerosis nor, indeed, any other spinal disease. They held that he was malingering, and that his claim was fraudulent. They had examined him on behalf of the defence, and had applied all the standard tests for sclerosis.

The plaintiff called only one medical witness. This man gave a very glib account of the condition of the "unfortunate plaintiff"; not a symptom was missed, not a test had failed. He had no doubt whatever—a clear case. The plaintiff, so said this cocksure witness, would never be able to work again, and would remain a helpless burden on his wife and relations for the rest of his days. The jury were obviously impressed, but whether by the fearsome long words or by the confident manner of the witness, one could not say. It was noticeable that, while giving his evidence, he constantly referred to some writing before him—he was, in fact, reading his evidence from a paper. A witness may not read his evidence, but he may, with leave of the Court, use notes to refresh his memory provided they were made by himself at the time or shortly after the event or circumstances to which they refer.

The cross-examination of the witness was brief and came to a sudden and dramatic termination:

"I notice you have been reading from a paper in front of you," began Counsel for defendant: "what is it?"

"My notes."

"Made by you?"

"Yes"—but with some slight hesitation.

"At the time you examined the plaintiff?"

"Ye-es"—but with increased hesitation and uneasiness of manner.

"In your own handwriting?"

This time there was a distinct delay in answering. I noticed that the witness was shuffling his feet: it is rarely that a liar can control his extremities. Then, suddenly and boldly he answered:

"Yes—of course."

"Show me the paper," said Counsel.

Witness became painfully agitated; the jurymen were all looking at him with obvious interest.

"They are my notes," he said at length, "and no business of yours."

Counsel was quite unruffled by this impertinence. In the same firm, quiet tone as before he repeated his demand:

"Show me the paper."

The witness looked first at the Judge, but found no help in that quarter; then at Counsel for the plaintiff, but he was nervously scribbling on a blotting-pad. Finally, he tried to look the cross-examiner in the face, but quailed.

And then—he handed over the paper.

My friend looked at it and passed it to me. We both recognised the handwriting; it was not the writing of the witness, but quite unmistakably that of Counsel for the plaintiff. The paper was headed "Notes for Doctor X: Lateral Sclerosis; Symptoms and Tests." It had been copied verbatim from a standard medical work on diseases of the spine.

I wondered what my friend would do next. To expose the doctor meant also to expose Counsel for

plaintiff. Both richly deserved it; but the case for the defence, as we both knew, was as strong as a castle, and my friend was the most soft-hearted of men. He looked steadily at the wretched man for a few moments; and then, in his quiet and deliberate way, said:

"May I tear up this paper?"

The doctor's "Yes" was a barely audible whisper. Counsel tore the paper into fragments, dropped them on the floor, and sat down. The Judge, who instinctively realised that there was something wrong somewhere, adjourned the Court at this stage till next day.

But there was no "next day"; for the following morning the plaintiff's solicitor filed a "Notice of Discontinuance."

It is pleasant to turn to a very different experience of a medical witness. I was defending a young girl on a charge of child-murder. The case for the Crown was that she had strangled her child at birth with a stay-lace or a shoe-string or some other hard thong. The defence was that the child had been strangled inadvertently by the umbilical cord. My theory, I am afraid, was not very probable; but I thought it was at least possible.

I called a doctor—a friend of mine as well as of the Crown Prosecutor. He had recently set up in private practice after being a surgeon in the British Navy throughout the Great War.

He delivered himself of a little lecturette on the pangs of childbirth, its terrors for an inexperienced girl, the unlikelihood of criminal intent in such circumstances, and more to the same effect. A sympathetic jury listened most attentively. Then I

led him to the theory for the defence. He gave his evidence very gingerly ; he had not personally seen a case of strangulation by the umbilical cord ; he had read of such in the books ; in the circumstances of this case it was—well—" possible." Further he would not go ; and there was really no need to cross-examine him.

But the prosecutor could not resist the temptation to chaff the witness, though the merry twinkle, seldom absent from the doctor's eyes, ought to have warned him.

" I take it from the evidence you have just given that you are a specialist in obstetrics ? "

" Oh dear, no : just a very humble G.P. ; but," he added, " I did scrape through an exam. in midwifery, you know—among other subjects."

" You were in the Navy, I think, during the War ? "

" Yes—for the duration."

" Ah ! then it was there no doubt you learned so much about childbirth ? "

" No," said the doctor ; " but that was where I learned all about *navel cord*."

And so the doctor left the witness-box with the honours of war !

It is the cross-examination of young children, and in a less degree of women, that demands in an advocate the greatest amount of skill, tact, and delicacy. No jury will tolerate a rough way with children or a truculent manner towards women.

Children live in a world of make-believe ; the more intelligent and imaginative they are, the more readily do they confuse the real with the unreal. They often lie from a perfectly innocent love of

romancing ; with their innate sense of the dramatic, the witness-box is to them the centre of the stage ; they are there to speak their piece.

If they have been "coached," the task of the cross-examiner is not so difficult ; if he gets them to repeat their story once or twice, its parrot-like character will probably reveal its falsity. But if they are genuinely romancing and the story they tell is really their own invention, the best method to adopt, in my experience, is to lead them on and encourage them to elaborate the details ; above all, let them think you believe them implicitly and are thoroughly enjoying their fairy-tale. If you handle them aright, their story will presently develop such a crop of fantastic and preposterous incidents that no jury can believe it.

Women are simpler ; when they lie deliberately they do it from some indirect motive—envy, jealousy, sheer malice, and evil-mindedness. It is not difficult to bring out their motive : once you have done that your task is generally easy.

Soon after I joined the profession I was retained as Counsel in an action which presented several points of interest. The plaintiff, a widow of small means, had leased her house to the defendant for a term of years. The lease contained a covenant binding not the tenant, as is usual, but the owner "to repair." The effect of this clause was, for example, that if the house was destroyed by fire the owner would have to replace it with a new house, and continue to let the tenant occupy it for the balance of the term at the rent he had agreed to pay for the old one. But the lease, unfortunately, also contained a "purchasing clause" which gave

the lessee the option, at any time during the currency of the lease, to purchase the property at a sum named, being approximately the market value of an old house, such as this was.

One night the house was burned to the ground. The tenant called upon the owner to rebuild under her repair covenant ; and at the same time he gave her notice of his intention to exercise his option to purchase. She was therefore obliged to build a brand-new house and then sell it to the tenant at the price named in the lease—a sum little more than half of what the new house would cost her to build.

In this dilemma she naturally began to look round for a way to escape. There were rumours about that the tenant had deliberately set fire to the house ; for them there was happily no foundation whatever. But, if the evidence available could be relied on, the fire was clearly due to the tenant's negligence.

He was, it appeared, an amateur poultry expert and bred chickens for a hobby. He had recently purchased, second-hand, a very crazy and defective incubator, partly constructed of wood and warmed by a kerosene lamp. This he had set up, of all places, in his bath-room. He and his wife had in their employ a maid-of-all-work, and on the evening of the fire she and her father, who was escorting her back from a visit to her family, both noticed a flickering light visible through the frosted glass of the bath-room window. Annie assumed, as she afterwards said, that it was only her employer " pottering about with his messy old incubator," and thought no more about it.

Some little time after she had gone to bed she was awakened by a smell of burning, and presently realised that the house was on fire. She jumped through the window of her bedroom at the back of the house and saw flames and smoke bursting through the roof immediately above the bathroom.

The case, one felt, was decidedly "thin"; it rested almost entirely on Annie's evidence. But the widow's situation was desperate; so she brought her action against the tenant, claiming damages for negligence in allowing her house to catch fire.

I was Counsel for plaintiff; defendant's Counsel was a country practitioner—an excellent lawyer, as I afterwards learned, but not, as the sequel proved, a skilful advocate. He was an old man and practised the methods in vogue in his youth. So, of course, he attacked Annie, as I fervently hoped he would do. Fully instructed, no doubt by defendant's wife, he set himself to destroy the servant-girl's reputation. He got from her that she had left a previous situation without giving proper notice; that she had taken French leave on one occasion and gone to a dance when it wasn't her night out; and she had piled insult on injury by borrowing a bicycle belonging to her mistress without asking permission. Truly terrible offences! But when he asked her a question about some "change" from the grocer's, Annie burst into tears of indignation at the implied suggestion, and he had the sense, though too late, to drop it.

The cross-examination had made it quite clear that Annie need never apply to that mistress for a "character," but as to her story about the origin of the fire—that remained absolutely unshaken.

The wife of the defendant, when called, gave her evidence-in-chief with telling effect. She was a pretty and attractive-looking woman; elegantly dressed, wearing a sealskin coat and a very smart and becoming little toque. She made an excellent "first appearance" in the witness-box, but as I knew she had been for some time before her marriage "on the boards" of a London theatre, I was not surprised that she made the most of the "part" allotted her on this occasion.

My task, I realised, was no easy one. If the jury believed her evidence, my case was at an end. I must somehow manage to get into her good graces at the outset, or my cross-examination was doomed to failure.

So I "skirmished round" for a while to start with. I showed myself courteously interested in her losses in the fire, her antiques and beloved pieces of old mahogany; when, with tears in her voice, she mentioned that Sheraton cabinet, now, alas! ashes—she saw in me a fellow-connoisseur, deeply concerned. On the servant-girl question—obviously a favourite topic with her, as with so many housewives—I displayed the fullest sympathy and understanding, and presently I had her launched on the transgressions of Annie with lyrical invective. I also made her feel, I hope, that I was not insensible to her personal attractions.

Having got so far in my "skirmishing," I settled down to business.

By the time I had finished with her she had completely "given away" her husband's defence, but I flattered myself she had not even a glimmering suspicion that she had done so. At any rate, I got

my verdict—and, what was more to the purpose, held it.

I am afraid that in telling this story I have been blowing my own trumpet with unseemly vigour, yet I hope I may be forgiven one more blast on that instrument. For when the case was over the foreman of the jury said to my clerk :

" We didn't quite ' tumble ' at first to your boss's examination of the lady. *We all thought he was just ' mashing ' the little woman.*"

That I shall always regard as the highest compliment ever paid to me at the Bar.

But my clerk also observed the foreman go up to Annie, pat her kindly on the shoulder, and say to her :

" *Well, my girl, we've put your character right, anyhow.*"

And so it was not my cleverness won that case after all ; it was my adversary's stupidity in attacking the maid-servant that got me the verdict !

For the last of my " modern instances " I am indebted to the late Sir John Denniston. When he was in practice in Dunedin, before his elevation to the Supreme Court bench, he was engaged on one occasion in the defence of a man charged with setting fire to some business premises in that town.

The principal witness for the Crown was a man of bad repute ; he was himself under some suspicion in connection with the same fire ; there were those, indeed, who thought, perhaps unjustly, that the man in the witness-box ought to change places with the man in the dock. At the close of his examination-in-chief the luncheon adjournment was taken. As

he was leaving the Court, Mr. Denniston, as he then was, was accosted by a perfect stranger.

"Mr. Denniston, I can tell you something about that witness that may be of use to you: he was convicted of arson himself at home in Scotland some years ago."

"Can you give me the particulars—place—date—sentence?"

"No, it was at Dumfries—that is all I know. But you can absolutely rely upon my information. I know for certain that he was convicted of arson at Dumfries, but that's all I do know."

This was much too vague and indefinite to act upon. If the witness denied the conviction, Mr. Denniston could carry the matter no further, and the question might well set the jury against him. He felt he must not risk it.

He had occasion to go to his office in the luncheon hour, and rummaging in a drawer of his desk for something he wanted, his eye lit upon an old copy of the *Scotsman*, faded and yellow with age. It had been sent to him many years before by a friend in Edinburgh for the sake of some news item in it of interest to both. He put the paper in his pocket and decided to take that risk after all.

When the Court resumed, he rose to cross-examine. Taking the paper from his pocket, he unfolded it and held it in such a way that a man in the witness-box could see the name of the paper in large letters at the top of the front page.

"Let me see," said Counsel, "what is your full name again?"

"Alexander Macpherson."

"Ah! then you were yourself convicted of arson some years ago at—er——"

He hesitated, and for a few seconds pretended to be searching the inside pages of the newspaper for something he wanted to find; then, suddenly:

"Ah, yes: at Dumfries?"

"Yes," was the hesitant answer.

And so courage and mother-wit were rewarded. But these little things, alas! refuse sometimes to "come off."

Chapter XVI

JURIES

I THINK it was Canning who said, " The House of Commons is more moral than any member of it." If it wasn't Canning, it was someone else with a turn for epigram. At any rate, I venture to adapt it, and to say, " A British jury of twelve is more intelligent than any member of it." From this it will be gathered that my original faith in juries, confirmed when I was a verdict-getter at the Bar, has not yet at any rate been shaken by my experience on the Bench. When those twelve men, after retiring to consider their verdict, settle into their seats in the jury-room, when they have got their pipes or their cigarettes going—there are usually eleven smokers among them—and the foreman has rapped on the table and said, " Well, gentlemen, what about it ? " they get down to a common-sense, plain-speaking discussion which I believe in nine cases out of ten results in their arriving at a close approximation to truth. It is true that in a criminal case they do lean towards mercy. It is true also that there are several classes of criminals whom they are reluctant, to the point of obstinacy, to convict. Bookmakers under our Gaming Acts are a case in point ; but that is merely because their consciences are uneasy—too many of them have

had bets with bookmakers, and so broken the law themselves.

It is equally true that in certain classes of civil cases they show bias. They will persist in giving more damages than they ought to give to a widow with seven children, if they learn in the course of the trial that the defendant is indemnified by an insurance corporation. But that, after all, is a very human foible.

Naturally the intelligence of juries collectively and that of jurymen individually differ. In New Zealand, for example, it is very unusual to find a juryman who is not a reasonably educated man; but again education is not a criterion of common sense.

I remember a criminal trial in Christchurch where Counsel for the accused, a criminal advocate of great experience, intense earnestness, and truly magnificent pertinacity, delivered an impressive and eloquent address on behalf of a prisoner so manifestly guilty that none of us expected the jury to leave the box. In the robing-room the Crown Prosecutor said to defending Counsel:

"You surely don't expect to get an acquittal, do you?"

"Well," said the indomitable one, "I wouldn't despair of that; but I feel pretty confident of a disagreement. I don't know whether you noticed a middle-aged chap, number six in the front row—a man with a shaggy grey beard and the look of a moth-eaten goat. I concentrated on him. He never took his eyes off my face. He followed every point I made with rapt attention. I feel certain I've got him." Half an hour later the jury returned

to Court, not with a verdict, but with a request for directions. They had only just discovered that one of their number was stone deaf and had not heard a single word of the case. And so the jury had to be discharged, and a new trial ordered.

Need I say ? But of course not.

The average intelligence of a jury depends to some extent upon the guidance it receives from its foreman. Sir John Denniston used to tell this story of the " supremely sensible foreman."

A criminal who had a long list of previous convictions was charged with breaking and entering. The case for the Crown was unanswerable, and indeed no serious attempt was made to answer it. The jury were scarcely seated round the table in the jury-room when it appeared that eleven of them were in favour of a conviction ; so the foreman turned his attention to the twelfth, but could make no impression on him. At last number twelve got impatient and said, " Look here, boss, you can talk all you know, but it won't make no difference to me. The accused is a cobber of mine, and if I have to sit here all night I won't agree to a verdict of guilty." " Gentlemen," said the foreman, " we will now return to Court and I will inform the Registrar that we are unanimously agreed upon a verdict of guilty. And," he continued, turning to number twelve, " if you dare to open your mouth I'll tell the Judge what you've just said in this room." The jury returned to the Court and the foreman, in answer to the usual question, pronounced the verdict of guilty—and number twelve stood meekly silent.

When at the Bar I always made it my business

through my clerk or someone else to find out after a trial was over what were the features of the case which had most influenced the jury, or what were the grounds of their verdict. It is only by knowing the minds of jurors that you can hope to acquire the art of getting verdicts, and all my life at the Bar I made a hobby of what Americans, I suppose, would call " jury psychology."

Of the earnestness and sincerity of a jury the following is the most striking illustration that came within my personal experience. I was retained to defend a middle-aged working man who was charged with a sexual crime of a very abominable character. Had he been convicted, he would have been imprisoned for fifteen to twenty years. I told the jury in the course of my address that if they were satisfied of his guilt, there was not one word I could or would say in mitigation of any sentence the Court might pass upon him.

But I was myself firmly persuaded of his innocence. I had him under cross-examination in my office for several hours before I consented to defend him. He left me feeling that not only could I not refuse to defend him, but that it was my solemn duty to defend him and that to the utmost of my vigour and ability. It was a hard fight—the Crown case appeared to be overpoweringly strong ; but as it was his own demeanour in conversation with me that had won me over, so I must trust to his own demeanour to convince the jury. I therefore called him as a witness in his own defence. The Crown Prosecutor replied to my address in a vigorous speech, and the Judge's summing-up was a scarcely less vigorous address for the prosecution. But the

jury had judged my man, and, as it afterwards appeared, judged him rightly. Addresses are really of very little importance in a case where the accused must stand or fall by his own story and the way he tells it.

The foreman of the jury was a man I had known for many years, and meeting him in the street some days after the trial he told me what had occurred in the jury-room. The jury approached the case with a due appreciation of its grave importance, both to the accused and to the public, and after half an hour's deliberation eleven of them were in favour of an acquittal, but the twelfth could not see his way to agree. He could not understand, he explained, how a girl of thirteen could possibly have concocted the elaborate story she had told in the witness-box. He appeared to be a perfectly fair and honest juror, but no argument could change his mind.

After an hour or so's earnest discussion a member of the jury, who had hitherto been silent, rose and walked over to where the dissentient sat. It had been noticed that this man wore the badge of the Salvation Army in the lapel of his coat. To the astonishment of everyone else in the room, he suddenly knelt upon the floor and offered up a prayer to God that He would lighten the darkness in the mind of their doubting brother, that He would lead him to see the truth as the other eleven believed they saw it, and that He would in any event incline their brother to mercy.

Those twelve men, as far as I could gather, were of diverse religions and sects—some of them of none ; but it never occurred to any one of them to

smile or look sceptical while the Salvationist offered up his simple little prayer. When he had finished, he rose from his knees, and placing his hand on the shoulder of the doubting one, said :

" Brother, has God answered my prayer ? "

" Yes, but in part only—my mind is still not convinced ; but if I give in to the other eleven I shall err, if I do err, on the side of mercy. I agree to a verdict of not guilty."

Within three months of that trial certain facts came to light which completely established the innocence of the accused man.

Advocates and Judges alike are fond of reminding juries of the sanctity of their oaths, of impressing upon them that they have sworn that they will " a true verdict give according to the evidence." If they can see their way to a " true verdict " apart from the evidence, or even contrary to the evidence, I am afraid they will sometimes arrive at it, and forget all about their oaths. I had an interesting experience of this in an insurance case. The Public Trustee was suing the —— Mutual Insurance Company on behalf of the next-of-kin of a man who had died, the holder of a policy for £800 with the company, on which he had been paying premiums for some fifteen years. He had met his death through taking prussic acid, and the Coroner had found a verdict of " death by suicide," without the usual humane but frequently euphemistic addition " while in a state of unsound mind." Upon this ground the Company refused to pay, sheltering itself behind some clause in the policy. I had no hesitation in advising that the action would succeed, and was retained as Counsel by the Public Trustee.

The deceased was a pharmaceutical chemist. He had gone downstairs during the night into his shop and evidently helped himself to prussic acid from a phial on the shelf. It was so utterly improbable that a dispensing chemist should fail to detect the smell of prussic acid and take that poison in mistake for some harmless medicine, that the theory of accident seemed to be out of the question. I concentrated my attention therefore upon unsoundness of mind. There was some little evidence of past insomnia and of moods of depression observed by neighbours, and—well, it doesn't usually require much evidence to induce a jury to believe that a man who commits suicide is out of his mind when he does it. Indeed, juries are apt to think that suicide in itself is evidence of insanity. In my reply, just before concluding, I adverted very briefly to the third possibility. The whole case, I reminded them, had seemed to turn about the alternative of sane or insane, but there was the possibility that the unfortunate man had not committed suicide at all, but had swallowed the prussic acid in mistake for a soporific or some other drug.

When the jury retired they were not long in coming to a unanimous conclusion that the deceased had taken a dose of prussic acid while of unsound mind, and that the Public Trustee was entitled to judgment against the Insurance Company. And then that jury did this very perverse but very kind thing. Two sisters of the deceased, young women with young families, had given evidence in the case about their brother's occasional moody fits. The jury were about to return to Court with their verdict in the form stated when the foreman

detained them. "Look here," he said, "it doesn't matter in the least to the Insurance Company whether we find that the deceased committed suicide while of unsound mind or that he died by accident. The Company loses either way, and it won't cost them a shilling more whether we find accident or insanity." "But what about the evidence?" said one. "We're sworn to give a verdict according to the evidence, and we are all satisfied that he committed suicide." "Hang the evidence," said the foreman; "think of those two sisters of his. They won't like a verdict of insanity against their brother, especially as they've got children of their own. Why not let's be kind?—it won't hurt anybody." And kind they were. They returned a verdict that the death of the deceased man was due to accident and gave judgment against the Insurance Company, in flagrant disregard of the evidence and of their oaths; which of course was a very wrong thing to do, but juries *are* like that—sometimes!

This case reminds me of the principles on which I acted when at the Bar in challenging. Many advocates challenge from distrust; my system of challenging was based upon trust of juries. I never challenged a man, for example, because I happened to know he was a client of the firm of solicitors who were opposed to me, or because he was a member of a rival trading company to the one I was acting for; still less because—and this might easily happen with a special jury—I happened to know that a particular juryman was an acquaintance or even a personal friend of my opponent. I did my challenging more or less on class lines. If I was Counsel for plaintiff in a damages case, I

challenged everybody connected with insurance, because the whole training of an insurance man is to keep damages down. I always challenged accountants—I can't really say why, unless it was from a vague idea that they are apt to think life's problems can be solved by a proportion sum, and the answers worked out to three places of decimals.

In this particular case, when the jury had retired, my opponent twitted me with having been caught napping in my challenging. The jury was a special jury, most of them well-to-do business men.

"The General Manager," said my opponent, "has just told me with great glee that no less than five of the twelve are policy-holders in the defendant company and carry on their lives in the aggregate £16,000."

"Just the men I want," said I; "pity there aren't ten of them. They're men who have given practical evidence of their belief in life insurance, and they'll be keen to give a lesson even to their own company not to quibble when their policy-holders die, but pay out and be quick about it." As a matter of fact, I learned afterwards that the foreman of the jury was not only a large policy-holder, but was even a local director, and was exceedingly angry with the head office in Sydney for persisting in the defence of the action.

My method of challenging was sometimes puzzling to the solicitors who retained me. This was well illustrated in a libel action in which I was retained to "go special" to Palmerston North, an inland town in the centre of a sporting district in the North Island. I remember the case for another reason also—because I won it, or virtually won it,

on the shortest speech I ever made to a jury. The plaintiff was a well-known and highly respected horse-trainer. He trained for some of the largest owners in the Manawatu district, where Palmerston North is situated. By an unfortunate mistake a newspaper included his name in the Official Forfeit List published from time to time by authority of the New Zealand Racing Conference. So long as the plaintiff's name was on the list he was personally disqualified under the Rules of Racing, and so were all horses trained by him. Before the error could be rectified a horse from his stables won an important race at Wanganui on Boxing Day. On New Year's Day another won a big stake in Hawke's Bay. In each case, of course, there were protests; but such was the plaintiff's reputation and such his means that it was incredible that he should have incurred a forfeit. The Stewards of both Clubs therefore accepted his statement, verified by solemn declaration before a Justice, that his name had been included in the Official Forfeit List in error. So the protests were dismissed, the stakes paid over, and no real harm done. The error was, of course, corrected in the next issue of the newspaper, an ample apology tendered, and most people probably thought this was enough. But the trainer's solicitor thought otherwise, and he launched an action claiming £1,000 damages for libel. We offered further publication of the apology and a considerable sum to cover costs, but to no purpose. So we paid a sum of money into Court, tendered an apology again in our pleadings, and went to trial.

I arrived at Palmerston North the evening before the case came on for hearing, and the local solicitor

in charge of the matter met me with a long face. It was a dreadful panel that had been summoned, he said ; three-fourths of them were racing men and sportsmen. It would be impossible to get twelve men out of that panel who were not half of them racing men and acquaintances if not friends of the plaintiff. And he then proceeded to figure out a small list of men, nonconformist tradesmen and people with anti-gambling proclivities, who he thought with luck might be drawn on the jury. " But," I said, " it's racing men I want. Challenge all these nonconformists and anti-gamblers, and get me a jury if you can consisting entirely of men interested in sport." The solicitor was obviously dismayed at this extraordinary method of picking a jury, and no doubt thought how much wiser the defendant would have been had he trusted to local Counsel to conduct the defence. Readers who are interested in racing will know that betting in New Zealand is done on a machine called the totalisator, familiar at home under the name " pari-mutuel." The public, by their investments on the machine, themselves fix the odds, the dividend paid on the winning horse being proportionate to the number of people who have backed it. The odds vary from minute to minute, and it is very exciting for the crowd to watch the numbers of investors on each horse alter on the electric indicators. A horse may be a rank outsider a quarter of an hour before the race, and yet, when the machine is just about to close, suddenly jump into place among the favourites, which usually means, of course, that the " stable money " has been put on at the last moment in a lump sum.

I fear this is a very long digression, not fully justified perhaps by the point of my story.

The plaintiff went into the witness-box, of course, but my cross-examination was brief and flattering. He actually blushed at the laudatory suggestions I made; I had heard him spoken of as the most highly respected trainer in the district. The plaintiff deprecated, but humbly hoped he might deserve the reputation. The stewards at the Wanganui and Hawke's Bay meetings had accepted his word that it was all a mistake his name being on the Forfeit List, and dismissed the protests. Did he not consider this a great tribute to his reputation? Might I not, in fine, take it that there was no trainer in New Zealand whose name stood higher in the racing community? It was here that he blushed, and I sat down. I called no evidence, and had therefore the precious "last word" with the jury. My address occupied less than three minutes. I had only arrived for the first time in their beautiful city the night before, I told them, but I had been there long enough to learn how highly the plaintiff was thought of in the community. He had entered for the "Defamation Stakes," the defendant had paid money into Court and had apologised. The plaintiff, therefore, could not lose; all he had to do was to walk over the course. "You, gentlemen, are the public: it is for you to fix the odds and to declare the dividend on the totalisator—if that be not too flippant a way to describe the judicial process of estimating damages. If you declare a big dividend on the plaintiff you treat him as a rank outsider. He is, as you know, nothing of the kind. From all I have been able to learn during my short

stay in this district, he is a favourite, and a general favourite at that. Prove your confidence in the favourite then—show your belief that his reputation is much too good to be injured by a mere clerical blunder in the newspaper, and treat him as the public treat favourites on the course, by declaring a strictly moderate dividend."

When I resumed my seat, the jury were all smiles ; even the Judge's rather ponderous summing-up did not disturb their good-humour, and they fixed "the dividend" at £25—the amount paid into Court !

It is useful to remember that most jurymen, at any rate in this country, are good sportsmen, and an appeal to their sporting instinct seldom fails.

I am only able to speak from personal experience of juries as we find them in New Zealand. I think the standard of education among them is distinctly higher in this country than elsewhere, and I fancy they are more independent. It is very seldom you find a jury that is merely a reflex of the mind of the Judge. Indeed, jurymen are apt to resent overmuch direction and advice from the Bench. They expect a summing-up to be "true to label"—a balanced summary of the evidence for the purpose of recalling it to their memories, not a series of instructions as to what inferences they ought to draw from it. In this country of "All Blacks" there is never a jury that hasn't one or more footballers on it, and as sure as a Judge's summing-up shows a strong leaning in one direction or the other, one of them will ask in the jury-room, "What's the referee doing kickin' the ball ?" And if the manner of "kicking the ball" has been too vigorous, someone else is

sure to observe, " Never mind the referee ; we'll do this on our own."

It is this spirit of independence in juries that makes re-trials dangerous in a small community. Every juryman reads his morning paper, and it is odds that some of the twelve at the new trial will remember the result of the previous one. I had an amusing illustration of this with a special jury some years ago. I was Counsel for plaintiff in an action against the Minister of Railways in a claim for damages for nuisance done to the plaintiff's premises by drainage from the adjacent railway station. The plaintiff claimed £1,000, a sum which I soon found, on going into the evidence, to be exorbitant, and I was much relieved when the special jury which tried the case returned a verdict for £100. Decision was reserved on some questions of law involved in the case, but Counsel for the Railway Department made no move to attack the verdict on any other grounds than those reserved, and on these I succeeded. To my astonishment and indignation, the Judge on his own motion set the verdict aside on the ground that the damages were excessive, and expressed the view that had the question of damages been left to him, he would have awarded £20 at the most. The matter might have been left there, and the unfortunate plaintiff been forced to accept the beggarly £20, which the Railway Department promptly offered to pay him, for he had no money left wherewith to pay jury fees and witnesses' expenses of a second trial. But fortunately for him I was angry, very angry indeed, and so were his solicitors and some of his friends. So a little fund was scraped together somehow—

enough to enable him to proceed to a new trial. The evidence of damage was exactly the same at the second trial as at the first—it was impossible to obtain any other—but the second special jury knew, or at least some of them knew, that they were wasting a day on trying over again a case to which one special jury of Christchurch citizens had already given their attention. They remembered the earlier trial, having read about it in the papers, and they very soon decided that they would teach the Judge a lesson not to interfere with jury verdicts by awarding exactly the same damages as the jury in the first trial had awarded. Upon that they were unanimously determined, but not one of them could remember the amount of the earlier verdict. All they did recollect was that it was something quite small compared with the amount of the claim. After some discussion they felt that all they could do was to guess at it, and guess they did; they "guessed" £200—just double the amount of the original verdict. When the foreman announced the verdict, I watched the Judge's face with, I fear, malicious satisfaction, but remained seated.

"Don't you move for judgment?" asked the Judge.

"No; if your Honour pleases, I am waiting."

"What for, pray?"

"In the hope that your Honour may set aside the verdict again, so that I may double it once more."

That, I admit, was insolent on my part, and what was worse, it was meant to be insolent: for I was frankly very angry."[1]

[1] *Shadbolt* v. *The King*, 1909 New Zealand Law Reports, p. 1026.

In New Zealand the Code of Civil Procedure provides for juries of four in cases where the amount claimed by the plaintiff does not exceed £500. A jury of four is an abomination. The instinct of the English people in deciding upon twelve as the number of triers was as sound in that as in most other things. Four samples are not enough from which to deduce with safety the average Englishman. Most lawyers distrust juries of four, and that is why in so many actions the plaintiff claims "£501," not because he expects to get half that sum, but because his Counsel prefers a jury of twelve to a jury of four.

The most stupid jury in my experience—I'm not sure that it was not the only utterly stupid jury in my experience—was a jury of four. The plaintiff claimed £250 from a police officer by way of damages for assault. The constable, he said, had struck him a blow with his baton which fractured the jaw on both sides of the mouth. The incident was said to have occurred in the course of a street affray, and it was proved that the plaintiff in running away from the officer had pitched forward and fallen flat on the road surface, which had a smooth coating of asphalt. My theory for the defence was that the plaintiff had sustained the double fracture of his jaw by striking the hard road surface with the point of his chin; but I could not get a single medical man in town to support my "theory." Counsel for the plaintiff asked his chief medical witness whether the theory for the defence was feasible. "Impossible," was the curt answer; "there would have been signs of gravel rash on the chin." I left it at that and did not cross-examine

this witness. But I elaborated my theory in my address, and asked the jury to consider how the plaintiff had attempted to answer it. "Impossible," says the plaintiff's medical expert; "there would have been signs of gravel rash." "You, gentlemen, know Stafford Street as well as I do—evidently a great deal better than the doctor does. I ask you, did any one of you ever see gravel in Stafford Street?" And there, with a gesture of scorn, I left the medical evidence. It is almost incredible, but I got a verdict on that gravel rash. The Judge fortunately did not expose my absurd fallacy in his summing-up—he passed over it, I suppose, in sheer contempt for its futility. But the foreman told my clerk that it had turned the scale, and that they all thought that doctor a singularly stupid man for thinking there was gravel in the main street of the town!

A jury will be influenced by a striking situation or a dramatic contrast in a case much more than by the most closely reasoned logic or the most perfervid eloquence of Counsel. If a dramatic situation lurked in a case, I never failed to exploit it. On one occasion I did so, as I thought, to excellent purpose, so far as damages were concerned. It was a breach of promise case. The parties were to have been married on a Wednesday in the bride's parish some fifty miles up country, where the banns had already been called twice. The young couple spent the previous Saturday in town together, when he bought her some handsome presents, and on the platform of the railway station, as he was seeing her off, he gave her an affectionate kiss, and drawing her to him, said, "This will be our last

parting for years—after Wednesday we shall always be together." Next morning, the Sunday on which the banns were called in that village church for the third time, he embarked upon a steamship direct for London, and on the Monday the bride-to-be received a curt telegram from his brother to say that he was gone. In those days a journey from New Zealand ports to English ports occupied between six and seven weeks, but there was a much quicker mail service via San Francisco or via Suez. At any rate, when the "bridegroom" arrived in London and took up his quarters at a fashionable hotel he found a process-server waiting for him with a writ claiming £3,000 for breach of promise. So he doubled back to New Zealand to defend the action. He had, of course, to go into the witness-box to make some attempt to explain his conduct. I had ascertained from the shipping office that he had booked his passage and bought his steamer ticket at noon on the Saturday morning before he sailed. I elicited from him that he wore the same suit all that day and that he carried his steamer ticket in a pocket-book in his breast pocket. Then I got from him the details of the last embrace, how he kissed her and what he said to her, and how with his manly arm he drew her up against his bosom. The Judge meantime was fuming with impatience at my "irrelevant questions," as he called them. Even the jury must have thought I was trifling with them. But I stuck to my point. When I had elicited all the details I wanted, I turned on him and thundered at him, "When you hugged your sweetheart and kissed her good-bye, when you said to her 'After Wednesday we'll

never be parted again,' did you squeeze her up against your pocket-book and that steamer ticket for London ? "

He had not a word to say. I gave one swift look at the faces of the jury, was satisfied, and sat down. I am sure that that " hug " against that steamer ticket was responsible for at least half of the swingeing damages they awarded against him.

O. T. J. ALPERS.
From a caricature by Kennaway in the "Weekly Press," N.Z.

Chapter XVII

THE WESTERN CIRCUIT

MEMBERS of the Bar do not "go on Circuit" in New Zealand, but if they did the Western Circuit would be universally acclaimed the jolliest. For by that I mean the West Coast of the South Island, the genial, hospitable, topsy-turvy land, "over the range," where Samuel Butler laid the scene of his fantastic "Erewhon."

There it was that the great mining rush took place in the sixties, when Hokitika, the chief town, had for a brief space a population of between sixty and seventy thousand people, when sluicing claims washed away whole mountains round Kumara, when stampers working night and day crushed the solid rock at Reefton, and when mineral wealth in profusion tumbled into the lap of the lucky miner. To-day Hokitika's sixty thousand have dwindled to two thousand; Kumara, a village of derelict buildings, is kept on the map only because Richard John Seddon was for many years its Member of Parliament; felling timber is found to be more lucrative than winning coal; and the prosaic callings of dairy-farming and cattle-raising are preferred even by "old-timers" to the romantic but elusive pursuits of "puddling" for gold in the back-waters of rivers that are still among the most beautiful

in the world, though their beds no longer fascinate by the old auriferous glitter.

But romance still clings to the Golden West. Old miners, with nut-brown faces and snow-white hair, still spin yarns to tourists round camp-fires ; the spirit of adventure which brought their fathers there across the snow and ice of mountain passes sixty years ago still informs the sons and grandsons, and whatever may be the future of the West Coast, it is difficult to conceive that it can ever become commonplace. If there is no longer gold to be found in the crannies of the hills, there are still chuckle-headed " East Coasters " with credulity to be exploited, men whose gullibility constitutes a richer vein than ever was struck on Lone Star Mountain or in Dead Man's Gulch.

The first time I went " special " to Hokitika it was as Counsel for a firm of solicitors over a mining swindle. The relationship of mining mates is sacrosanct on the Coast, but is not always understood by strangers. An adventurous speculator had come across from Australia. He had heard how the shrewd West Coaster in New Zealand often made his living by exploiting the trusting East Coaster. Why should he not exploit the West Coaster in turn ? So he set about ferreting out information about old mining claims long since forgotten. He came across two in particular, registered in the Warden's Court in the names of three mates who were still alive, and still in Hokitika, but thoroughly hard-up and therefore easy to deal with. He proposed that they should assign him one-half of each of their claims, remaining mates in the other half. He would then proceed to the

East Coast and sell them. They thought he was mad, but he appeared to be "a shrewdy." The claims had lain idle for more than twenty years; even the industrious Chinaman refused to waste time or work on them. They agreed readily enough to his schemes; he, be it understood, bearing all expenses of the projected sale. So he left the West Coast for the East, fully armed with the necessary powers of attorney. Vague rumours reached them of negotiations with capitalists on the East Coast. They heard of mining engineers' reports; opulent-looking speculators came over from time to time and looked, incredible though it was, as though there were something doing. At last there came a telegram from their agent: "Have sold both claims straight out for cash. Returning to-night." The cash must be precious little; even if he had "salted" the claims, no one, they thought, could have been fool enough to buy them.

The three old hands met the Australian at the railway station that night with eager questions, their eyes bulging with excitement. Yes, he had sold, it was quite true; he had been paid in cash, also true; and, tapping his breast-pocket, there it was in his wallet. "How much?" Well, really, he had been travelling all day, and they must have dinner before they talked business. At any rate, they must have a bottle of wine among them first. So they repaired across the road to "The Magpie and Stump," the old miners' inn still owned by one of the mates, and there they drank a quart of real good champagne, for if you know how to set about it, there are few places

where you can get better liquor than on the West Coast. The three anxious mates gulped their glasses down, and said :

" Well, now will you tell us what you got ? "

But no, he was not to be drawn.

" What's one bottle among four ? " said he. " Open another."

They seriously began to fear lest the whole profits of the deal should be spent in liquor. But there was no moving him, so they had another bottle.

And then he deliberately pulled out his wallet, showed them the parchment copy of the deed of assignment, red seals and all, and proceeded to take out a wad of notes.

" For heaven's sake, man, out with it. What did you get ? " roared out old Joe Gallagher, an octogenarian, the oldest of the three mates.

" Here is what I got for the claims," said the Australian, " in good banknotes too."

And at last, after a dramatic pause : " Fifteen thousand pounds."

Old Joe reeled back on to the sofa beside the fireplace. The others thought for a moment the excitement had been too much for his old heart, but presently he recovered his breath and gasped :

" My Gawd ! Fifteen thousand pounds for a mullock heap ! "

This is not a romance. It is all there on oath, taken down as part of the evidence in the case. I don't know that, in my whole career at the Bar, it was ever my pleasure to elicit from witnesses a more dramatic story, or to hear a phrase more apt or more vivid than that phrase " a mullock heap."

The Australian was not content with his half-share

of the £15,000. He cleared out of New Zealand with a portion of what belonged to his partners. Hence the suit, in which I was Counsel for the three "mates."

At the date when this incident took place, however, the true glory of the Coast had already departed. For that lay in the romance of the mining camps. An old friend whom I met in later life as a patient plodder of golf-courses, where for some reason he was always called "The Count," began his career in the early days of the gold rush. He and his mate had pegged out a claim, but had not yet "struck it." The field was so far established that some pious diggers had already got the length of building a wooden shed to serve as a Methodist church. After the manner of Methodism it was opened with a tea-meeting. "The Count" and his mate were, like everyone else, canvassed to purchase tickets, but thought one between them was as much as they could afford. The toss as to which of them should go was won by "the Count," so he dressed himself in "a boiled shirt" and his best suit of clothes, and attended the tea-meeting. In those days raspberry jam—Peacock's Tasmanian Raspberry Jam, in tins—was the staple delicacy on the Coast, and the tables groaned under the weight of raspberry pies and raspberry tarts, and raspberry turnovers. "It seemed kinder mean," said "the Count," "to sit there scoffing tarts, while my mate had to content himself in his tent with pannikin tea and damper."

So while the eyes of the audience were riveted in rapt attention upon the speaker who addressed and exhorted them, "the Count" managed un-

observed to slip half a dozen raspberry tarts into the space between his singlet and his shirt front.

When at last the meeting broke up, " the Count " found, to his annoyance, that his lantern wouldn't burn. The night was pitch-dark, and a misty rain was falling. To get to his own claim he had to thread his way amid a maze of mining shafts of varying depths, the shallower ones " dry," the deeper ones " wet "—that is, with water standing to a depth of several feet in the bottom of the shafts. Presently—plump !—he tumbled into a shaft, but as he did so had enough presence of mind to utter a yell that roused the camp.

" I've often heard it stated," " the Count " used to say, " that when a man is on the point of sudden death, by drowning or some other accident, his whole past life seems to flash through his mind. But as I went scooting down that shaft there was only one thought in my mind—*Was it a wet one* ? Thank Heaven it was, and, with no bones broken, I spluttered up to the surface of the water again, and managed to grip hold of some timbering at the sides of the shaft. By the time I had clambered to the top several men with lanterns, having heard my shout, were there ready to help me up. I don't know if it was fright or the sudden plunge into ice-cold water, but I fainted, though only for a moment. As I came to, I felt someone unfastening my collar, to give me air, and the first sound I heard was the heart-broken voice of my poor pardner, as he pulled my shirt aside :

" ' My Gawd ! ' he exclaimed, ' the poor little blighter is busted.' "

It was not long before life became organised on

the West Coast as elsewhere in the Colony. Mining camps became mining towns, and the treacherous tracks between open shafts became streets and roads; one even hears of County Councils and Road Boards at quite an early period in the history of the Coast, for Richard John Seddon, whose name is associated with the earliest years of the West Coast and whose memory will be honoured there to the end of time, made his first appearance in public life when he was elected to the Kumara Road Board. At that time, I think, he kept a store, but he also practised as a miner's advocate in the Warden's Court. His indomitable energy and his torrential eloquence very soon marked him out as a man to be counted with. A good story is told of a prediction confidently made by one of his most ardent admirers on the day he was elected to the Road Board. If the story isn't true, it is certainly characteristic both of the man and the situation. The bar was full of miners awaiting the result of the election. When the voting was announced, Seddon had headed the poll, to the great delight of the miners in the bar and the great profit of the bar-keeper.

"You mark my words," said the prophet, "that young feller Dick Seddon has only just begun. He's on the Road Board now; we'll send him to Parliament next; before long he'll be Premee-er," and then, thumping the bar counter with a fist that made the glasses rattle, "I shouldn't wonder if he ends up by becoming a b——y Governor."

Richard John Seddon had many critics during his long public career, but I never heard that there were any West Coasters among them. If there

were, they had the wisdom to keep their mouths shut.

There is one West Coast story for the absolute truth of which I can vouch. It is a legal story, and yet one feels instinctively that it, too, is " racy of the soil " and that it could only have happened on the Coast.

In the early days two mining mates, whom I will designate by their Christian names only, John and Sandy, found their claim petering out. Rumours of cheap land in the North Island induced Sandy to abandon the precarious life of the miner and to adopt farming as better suited to his cautious temperament. So he pulled out of the claim, and, leaving his wife and child to the care of his mate, went to the North. In the course of time he sent for his wife and child, but while the husband was away the wife had incurred liabilities for necessaries amounting to £40. These had been guaranteed by John and the debt was paid by him.

In course of time John too retired from mining, went into business, and prospered exceedingly. In a few years he had become, for a New Zealander, a very rich man. Years passed without his hearing from his old mate; he could only infer that he had been less fortunate than himself, and so forgot the debt. John and Sandy did not meet each other for close upon forty years, and then there came an occasion when all old West Coasters, still in New Zealand, met each other, however far distant their new homes might be from the Golden West of their youth. The occasion was the funeral of Richard Seddon in June 1906. He was buried in the capital city of the Colony he had ruled with

such distinction, and which he, more than any other single individual up to that date, had helped to make so well-known a unit of the Empire. Every West Coaster who could raise a steamer ticket or buy a train-fare made his pilgrimage to Wellington from the remotest corner of the Colony, as to the Mecca of his devotions. After the funeral was over, scores of them met in one of the hotels of the city, of which the proprietor was himself an old West Coaster; and, there, after all those years, John and Sandy foregathered.

"And how have you done?" asked John.

"Famously," answered Sandy, "I've got nothing to complain about. My farm is free, and the money standing to my name in the bank is on the right side of the ledger."

John expressed his pleasure at hearing the good news; and then:

"Now, what about that forty pounds you owe me, as you've done so well? It's a pity to have a trifle like that outstanding between us."

But this struck the yellow streak that was not far below the surface in Sandy. He became abusive and highly indignant.

"You mean old hunks," he said, "rolling in money—you could buy me out ten times over, and you ask me for a debt like that on a day like this. Anyhow, take this!" and drawing a ten-pound note from his pocket, he threw it on the table.

John, white with rage, picked up the note. He had saved his mate's wife and child from starvation nearly forty years ago, and this was his reward.

John returned to his home in Christchurch, where one of his sons had just begun to practise the law.

His friends suggest that at the present time he knows more of the Rules of Cricket than of the Statute of Limitations, having been for several years President of the New Zealand Cricket Council. To-day, too, he is not perhaps so well known in the Courts as on the Turf, where the victories of Count Cavour and other horses bred or owned by him recur with distracting iteration. But in those days he did know quite a lot of law.

"Would you like the rest of that forty pounds, dad?"

"Would I like it? You ought to know I can't get it after six years," said the angry old man.

"Are you prepared to sue him?"

"I'm prepared to hang him," was the answer.

"Well," said his son, "the payment of part of a debt overdue under the Statute of Limitations revives the whole debt. You can recover the other thirty pounds."

And recover it he did. John brought an action in the Hokitika Court; Sandy, instead of confessing judgment or paying the amount into court, put John to proof, and the lawyer son thoroughly enjoyed himself. Of the many West Coasters present in the hotel when the part payment was made he selected as witnesses the three whose homes were most distant from Hokitika, and whose allowances for travelling expenses would therefore be the largest possible. John got judgment for the full amount of his claim, with costs added, and rejoiced exceedingly. But it wasn't the receipt of the money, I fancy, that was the true cause of his rejoicing.

CHAPTER XVIII

SOME GENIAL CROOKS

"THE'S as much human nature in some folks," says David Harum, "as the's in others—if not more." For my part, I firmly believe "the's more."

And that belief was not disturbed even during those earlier years at the Bar when I had a large practice on the criminal side. I left that branch of work with genuine regret; or, perhaps, I should be speaking more correctly if I said that it left me. For once they notice that you are appearing in Court for banks and insurance companies and other like concerns of overpowering respectability, your criminal following become uneasy. A burglar not unnaturally resents his favourite Counsel fighting on the side of "vested interests"; it does not seem to him to be playing the game somehow: who drives fat oxen must himself be fat, he thinks; and he fears you have yourself become too respectable to have any real sympathy with his "profession." He does not know—how should he?—that you find the "perverse adventure" of crime much more interesting (if also less profitable) than advising on "cumulative preferential dividends" or the construction of charter parties. After all, bank

directors and shipping magnates are seldom really picturesque.

There are as nice distinctions in the criminal class as in any other section of society. Your nimble-witted " confidence-man," well dressed and well mannered, does not condescend to rob drunken men in dark alleyways—it simply " isn't done " in his set ; nor does the " swell mobsman " or the scientific safe-breaker consort with sneak-thieves or ruffians of the pavement—they are " not his sort." The Lombroso theories are quite exploded ; crime is sometimes, no doubt, a disease ; but much more often it is a profession.

Apropos of theorists of the Lombroso School, we have in New Zealand a Prisons Board, a peripatetic committee which goes the round of the prisons and holds periodical " gaol deliveries." It was originally instituted to deal with prisoners who are serving " indeterminate sentences " or are undergoing a course of " reformative detention." Its function is to receive reports on the conduct of these men, to consider their petitions, and if they are deemed to be reformed enough, to release them either absolutely or upon conditions as to future behaviour.

The lay members of the Board are usually kind-hearted gentlemen whose benevolent instincts have not been checked—as mine, I fear, must have been—by rough-and-tumble experience in the police Courts and at the criminal Bar. That experience, let me make haste to say, did not entirely dull my perception of goodness in things evil ; for I never knew a criminal who had not a better side, and many of them I found to be perversely likeable. But it is because of this, not in spite of it, that I

am a firm believer in punishment that is fixed and regulated—stern without being harsh and humane without being maudlin. And I rather think we shall find a safer guide in plain British fairness and common sense than in the sloppy sentimentalism exported by booster philanthropists from America.

I well remember one of the earlier members of the Prisons Board some years ago. He had read Lombroso (in a translation), and was, of course, a criminologist of the first water. Moreover, he was steeped in Yankee literature of "uplift"—that, I think, is what they call it. There was no copy of "Tom Jones" or "Tristram Shandy" on his bookshelves, nor even an "Oliver Twist." From such books even he might have learned something of life; but he thought them "coarse." Conspicuous on his shelves were the "complete works" of an American writer of the "Uplift" school—a gentleman called Elbert Hubbard—all very genteel and bound in suède covers. And what was worse, he had read them. But he was a kind soul and eminently "worthy."

An old hand—"Snowy" Smith, a burglar—had recently been sentenced at Dunedin to five years with hard labour for "assault causing actual bodily harm." He was interrupted one night when he was busily engaged in a dwelling-house in one of the suburbs; the owner of the house grappled with him, but "Snowy" drew off and delivered a blow on his head with a murderous-looking jemmy. The unfortunate man was unconscious for several days, but ultimately recovered. Most people thought five years, in the circumstances, a moderate sentence.

The Lombroso enthusiast called some time later upon the Crown Prosecutor in Dunedin, the late Mr. J. F. M. Fraser, and reminded him of "Snowy," whom he had prosecuted.

"I have had several conversations with him in prison," said the visitor; "he has a *beautiful mentality* and has had a most *uplifting* influence on the other *unfortunates* who are his fellow-prisoners." (The italics, as they say, "are mine.")

"Snowy" had, in fact, in better days, been a "local preacher" of incredible piety and had apparently not yet lost his pulpiteering persuasiveness.

"If he has such an admirable influence on the other scoundrels," said Mr. Fraser dryly, "the longer he remains there the better."

"Ah—no! I am afraid there has been a grave miscarriage of justice—mistaken identity, he suggests; I feel his innocence could be established if only I could enlist your help——"

But this was really too much for Mr. Fraser. He telephoned the central police station and asked that a sergeant whom he named should be sent round to his office at once.

"Sergeant," said he, when the man arrived, "aren't you the officer who was in charge of 'Snowy' the burglar in the prison-van after he was sentenced?"

"I was, sir."

"Will you please tell this gentleman the words—the exact words—'Snowy' spoke to you in the van?"

The Sergeant grinned amiably.

"'My oath!' 'Snowy' said to me, 'that was

a bit of luck for me all right. If that —— hadn't had such a b——y thick skull, I might have swung for it."

Mr. Fraser bowed his visitor out.

But this is really a digression; for "Snowy" is not meant to be included in my list of "genial crooks."

. . . . . .

Harold Watson and George Thomson—these were not, I fancy, their baptismal names—were two highly expert pick-pockets whom I was engaged to defend some years ago. They arrived in New Zealand from Australia in the month of August in time to work the many meetings of Racing and Trotting Clubs, and the many Agricultural and Pastoral Shows which are held in all parts of the Dominion between that date and Christmas time. They had the misfortune to be arrested during the great Racing Carnival in Christchurch in the second week in November, when "gallops" and "trots" are held on alternate days for a week or more, and the two great events of the year, the "New Zealand Cup" and the "New Zealand Trotting Cup," are run.

Between their arrival on August 7th and their arrest on November 11th they had banked in their joint names in the Bank of New Zealand just over £2,500—all done on the "hip" pocket. Race-goers in the Colonies are in the habit of carrying rolls of bank-notes in this pocket; for some extraordinary reason they think it the safest, though, as a matter of fact, it is the pocket the expert finds most easy to pick. Watson and Thomson explained their *modus operandi* to me: they would

join the queue at a "paying-out" window of a totalisator—the pari-mutuel machine in use on all our race-courses—or at the ticket office of a busy railway station or the stalls-door of a theatre. Selecting a man they thought a likely "mug," with probably a good wad of bank-notes in his pocket, they would get behind him in the queue. Thomson's part was usually to "shove" him, bringing pressure to bear on various points of his back and loins. This would cause no surprise in a jostling crowd, though perhaps some angry protest. Meantime, while the man's attention was thus distracted by Thomson's shoving, Watson would relieve him of his wad of bank-notes.

On the day of their arrest they had picked a "mug" badly; he looked a stupid, middle-aged farmer—a typical "hay-seed." He tried to grip Watson's hand and raised an outcry; and when the detective arrested the pair on a charge of stealing ten five-pound notes from the man, they found to their chagrin that he was not so simple as he looked—he had written down the numbers of his bank-notes in a pocket-book before leaving home. I made them plead guilty—there wasn't a possible fight in it—and they each got two years with hard labour. A "restitution order" was made, of course, and they had to disgorge those ten bank-notes. But their other gains could not be identified, and were safe in the Bank—so they made £2,500 in three months' operations, and this, with interest at "fixed deposit" rates, would be available for them when they came out of prison.

Mrs. Watson, a very attractive-looking woman, came over from Sydney in response to a cable as

soon as they were arrested. She was a professional nurse, and always contrived to get a position in a hospital in the town where her husband happened to be "doing time." This, she explained, provided occupation for her mind and enabled her to see him on visiting days at the prison. When he was "resting" and spending his "winnings," they usually occupied a suite of rooms at one of the best hotels in Sydney, where no one dreamed of suspecting "Mr. Watson," still less his well-dressed and good-looking wife, of being connected with anything "on the cross."

One day when I had occasion to visit the prison I saw my clients in the exercise yard. Watson, I noticed, had two fingers of his right hand bandaged; he explained that he and Thomson had been "skylarking" in the prison-yard one day and he had sprained two fingers.

"You careless fellow," said I, "are your fingers insured?"

"No, by Jove," said Watson, "and now I come to think of it, I've heard that Paderewski is careful to have *his* hands insured; I must see to it as soon as I come out."

The day they were sentenced Watson did a very pretty piece of work in the cells adjoining the Court, where the prisoners sentenced each day are detained till "Black Maria"—the prison van—calls in the afternoon to take them "home." A bookmaker had that morning received a sentence of six months for illegal betting—his first—and was whining and snivelling, a procedure contrary to all rules of good manners among prisoners. His wife visited him and contrived, while the tactful

warder looked the other way, to slip a packet of twenty cigarettes into his pocket. After the door was bolted again he took one out and lit it—holding the packet in one hand while he struck a match with the other. But he omitted the courtesy of offering a " fag " to the other two occupants of the cell.

" Where are my cigarettes ? " said the bookmaker angrily, suddenly missing the packet.

" I rather think you will find it in your mouth," said Watson, in his best drawl.

" You know quite well what I mean—I believe one of you stole the packet."

" Now, look here, my man," said Watson, " my friend here and I have quite enough to put up with from the Crown without suffering impertinence from you. We have just been sentenced to imprisonment for appropriating a few bank-notes, but we don't ' pinch ' cheap cigarettes. You had better feel for them in your hip-pocket."

" Of course," said Watson when telling me the story, " the cell was not well lighted, and the man was upset and nervous. But though I have extracted thousands in bank-notes from hip-pockets in every part of Australia, this is the first time I've managed to put a twenty-packet of cigarettes into a man's hip-pocket without his knowing it."

. . . . . .

" German Charlie " was a burglar. But as Gaoler Cleary said, " He is a gintlemanly burr-glar —if you understand me, sorr ! " I confessed I didn't quite understand him, so he explained himself.

Charlie was about to be let out after a long term, and told me he wanted to " run straight " for a bit

—perhaps for good, if it didn't bore him. The difficulty was to find him a job that the police wouldn't " chivvy " him out of. I could give him temporary work myself looking after my horse and digging in the garden ; but I lived at that time alone, with my old mother and one maid-servant. Suppose, some night when I was away from home, he got up to his old pranks ? So I consulted Cleary.

" You need have no fear," said he. " You trust Charlie and be kind to him as you propose, and he'll never burgle you. I won't guarantee your nayboors, if they have anything worth burgling. But Charlie is a gintlemanly burr-glar, as I've said, and he'll play fair wid *you*, sorr ! "

I rather fancy Cleary's high opinion of " German Charlie " was not entirely uninfluenced by a very pleasant compliment Charlie constantly paid him. Of twenty-odd years he had spent in the prisons of New Zealand, all but about two had been passed under Cleary's hospitable roof. Charlie first " lived with him " at Hokitika, on the West Coast of the South Island. But as Cleary was transferred on promotion to larger and larger towns, Charlie changed his " terrain " as it were, so that if he were captured by the enemy it should be in Cleary's territory. " Gaol," he said to me, " is a rotten place at the best of times ; but it is at least bearable where old Cleary is boss."

I don't know how he came to be called " German Charlie," for he wasn't a German and his name wasn't Charlie. He was, truth to tell, a Dane, and that is why, no doubt, he did his business with me. But we were both, I hope, good patriots and took care never to disclaim the convenient fiction of

German nationality so long as Charlie remained in the profession. By the time the Great War came he was no longer " German Charlie " ; his address was " Mr. John —— , Sheepfarmer, —— Bay." For, with the few pounds he earned in my employ, he paid his passage to Gisborne, on the East Coast of the North Island, where he was quite unknown. There, after a time, he married a half-caste Maori who brought him a handy farm for dowry ; and he remained, as he proudly informed me, " on the straight for keeps."

Once only Charlie departed from his own proper line, burglary—and did a " stunt " in the character of a swell mobsman. A very flash American and his wife were staying at " Coker's," then the best hotel in Christchurch. There was much talk of their wealth and their wonderful diamonds which were paraded every night at dinner. They were reputed to be millionaire tourists—rumour is always disposed to make millionaires of travelling Americans ; they were doing the " round-trip " and were on their way to Melbourne. Charlie was " resting " at this particular time ; so he took up his quarters at Coker's, posing as a foreign swell of some sort—he spoke English with a slight accent and had excellent manners—and he allowed himself to be called " Count." He soon became acquainted with the Americans ; they were delighted to find they were to be fellow-passengers with " the Count " on the steamer to Melbourne.

On the way over the jewellery, as Charlie politely phrased it, " changed hands." The Americans did not discover their loss till they got to their hotel in Melbourne, but by that time " the Count," in one

of his wonderful disguises, was a third-class passenger on the Sydney-bound express. He followed his usual tactics: doubled on his tracks and went straight back to Christchurch—the last place where the police would look for him. But he need not have worried himself: he wasn't "wanted" for those diamonds, for the Americans never even suspected their friend "the Count," who had doubtless left at once for Europe, as he had said was his intention.

But what to do with the "swag"? He carried the jewellery, or, rather, the diamonds which he had removed from their setting, in a leather belt about his waist. But he might be arrested any time for all he knew, and he dared not yet try to sell his treasure. One evening, when he was strolling about in the suburbs, he noticed the "skeleton" of a house. It had been partly erected—years ago apparently—for the timbers near the ground were green with moss and lichen, and the whole framework—there was nothing else—was grey with weathering. Here, he thought, would be a safe cache for a week or two. So that night with a hand-trowel he tunnelled under the concrete foundation for the central chimney—a most unlikely place to hunt for treasure, he thought—and there buried his belt. He passed the place several times a week—the spot remained undisturbed and all was safe.

Just at this time he had the misfortune to be arrested for an old offence, and got twelve months with his friend Cleary. When he came out, the house had been built! The long-interrupted building operations had been resumed, and a two-story "gentleman's villa residence" stood on the section,

with his precious belt buried under the drawing-room hearth! Luckily, the house was unoccupied and an agent's board notified that the place was "For Sale or To Let." He called next day on the agent, took a short lease "on behalf of a friend coming from the North Island," and paid a month's rent in advance. He got the keys for his "friend" to take possession. It was only a matter of an hour's work or so to rip up part of the flooring, open his tunnel under the concrete hearth and retrieve his belt. The diamonds were all there—intact.

At last he ventured to offer some of his diamonds to a "fence" whom he could trust. And then he got the shock of his life! The "fence" was a member of the Hebrew race, and anything he did not know about "stones" wasn't worth knowing. There could be no mistake—the "diamonds" were "fakes"—all of them, and the lot wasn't worth the money he had paid as "rent in advance."

Charlie was still angry with "those swindling Americans" when he told me the story nearly a year afterwards. "But," I reminded him, "your patent of nobility—your 'Count'—'paste' too, wasn't it?" and then his sense of humour came to the rescue. "Besides, you know," I ventured to say, "it serves you right for not sticking to your trade."

"Yes," said Charlie, rather sadly, "I suppose it's a good motto—'Once a burglar always a burglar.'" And then, after a thoughtful pause, he added: "That is to say, of course, until you retire."

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"Sammy" Haines was a horse-coper. Best of good fellows, he was honest in all things except

when it came to a horse deal. There he applied a special moral standard of his own, and was frankly a crook, but of all crooks the most genial. In my police-court days I often appeared for him to get him out of some scrape or other—usually without success.

He was a fine fighter, and loved the "game." When he wasn't hanging about "Tattersall's" passing off a spavined horse on an unsuspecting tenderfoot, you would be sure to find him at the "Sports Club" engaged in a "willing go" with the gloves on. Sammy, by the way, was graciously pleased to approve of me—especially after my return from a visit to Sydney in January 1909. I had gone to see Jack Johnson fight Tommy Burns for the world's belt, but I had not noised abroad this incident in my trip, for my clients were not all of Sammy's kidney; and I did not wish to hurt the feelings of those of them who, as good nonconformists, did not approve of prize-fights.

The friend who went over with me—Mr. J. P. Firth, Headmaster of Wellington College—was a tall, athletic-looking man: he stood 6 feet 4 inches in his socks and was apt to be conspicuous in a crowd. As we had paid five guineas each for our reserved seats, we had, of course good places in the stadium—second row, I think. Immediately in front of us, I remember, sat Mr. Jack London, author, among other good things, of that excellent story "The Game." Beside him sat his wife, the only woman in a crowd of 26,000 men! Both were engaged to report the fight for U.S.A. newspapers.

I returned to Christchurch a month later, and the very morning I came back Sammy was in my

office, breathless with excitement and suppressed curiosity about something.

" My word ! " he began, " I see you were at the fight."

I was utterly taken back : how in the world did he know ?

" Why," he grinned, " half the town knows. The film was shown at the theatre here last week, and everybody spotted you—you and the " Long 'Un " right in front."

Moral ! always dodge the camera man !

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Among other habitués of Sammy's Sports Club was an Oxford man, with a " blue " to his credit—" Babe, B.A.," someone had nicknamed him in allusion to his cherub face. He was an assistant-master at a Public School, and it was well known among the " sports " that the Headmaster looked with stern disapproval on his association with them. But he, too, loved " the game," and could seldom keep away for long. As for Sammy, he was the staunch friend of this pleasant-mannered swell, one of the few men who could beat him in a bout, and he accorded " the Babe " a dog-like devotion.

Late one Saturday night " the Babe " was on his way home from a dinner where apparently things had been merry and bright. Truth to tell, he was himself a little the worse for wear. In the roadway, in front of an hotel he had to pass on his way to his rooms, a street fight was in progress among some roisterers of the baser sort. He never could resist a fight, so stopped to look on. The row, whatever it was, was certainly no business of his, but presently—he never quite knew why, but no

doubt because he was excited with the wine he had drunk—he found himself in a "mix-up" with a foul-mouthed fellow, and landed him one "on the point." The fellow dropped in the roadway like a felled ox, "outed" by the blow; and a police-whistle blew and some constables were heard running toward the scene. At that critical moment Sammy came along; he had an unerring "scent" for a fight, and was seldom far off when fists were in play. He took in the situation at a glance. If the "Babe" were involved with the police in a street-fight, there would be the deuce to pay and he would certainly lose his position.

"Run, man, run!" he whispered—"here come the cops"; and "the Babe," who had a pretty turn of speed, was well away before the police came up.

"Who struck that man?" asked a constable, pointing to the fellow on the ground who was just coming to.

"I did," said Sammy. "I am going to plead guilty."

He was there and then arrested, and further inquiry was stifled by his prompt admission of guilt. Had he been a first offender, a fine of forty shillings or a "fiver" at most would no doubt have met the case; but, alas! it was many years since poor Sammy had been a first offender, and next day a hard-hearted Magistrate gave him a month "without the option."

"The Babe," of course, wanted to intervene and take his own gruel; but Sammy would have none of such "damned nonsense." "A month!" said he scornfully. "What's that? I've done

as much before and will do it again—on m' head ! "

Some years after he was in much more serious trouble—this time on his own account. It was he who struck the blow on this occasion, and again it landed " on the point " ; but his antagonist fell with his head on the kerb-stone, fractured his skull, and, before morning, died in the public hospital. Sammy was duly committed for trial on a charge of manslaughter and realised the gravity of the situation. There was no defence I could suggest that had any foundation in law, or would make the least impression on a Judge ; but fortunately it was the jury, not the Judge, I needed to bother about. The man Sammy had killed had called him by a word which, though used as a term of endearment in the navy and even regarded as a compliment in the army, if said " with a smile," is looked upon by civilians as the most opprobrious epithet one man can apply to another. So I set up the only defence possible—provocation and fair fight. Which of them, I asked the jury, if called by so foul a name would not have struck as shrewd a blow ? And they answered my question with a verdict of " Not guilty." But I more than suspect that Sammy's popularity among the sports —possibly, too, the story of how he had once done " proxy " for his friend " the Babe "—had a good deal more to do with his acquittal than had my advocacy.

But he insisted, like the kind fellow he was, that it was all my work. A day or two after his acquittal he called at my office carrying a parcel under his arm.

"I hear you've got a couple of boys," said he, "so I've brought along two pair of gloves for them."

"But, my dear fellow," I said, "the oldest is only seven and the youngest barely two."

"Never mind," said Sammy, "you can't put 'em to the game too young. They'll stand up to it all right."

So even the sharp lesson he had received, and the fright he had been in, had not shaken his simple faith in "the Game."

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Of all the genial crooks I came in contact with at the Bar, the most "genial," and I am afraid the most "crook," was my friend Parkinson; but he —well, he, I think, deserves a chapter to himself.

Chapter XIX

MY FRIEND PARKINSON

A Harris tweed suit, a Panama hat, and a good cigar: these were his simple accessories; but he regarded them as indispensable.

The tweed must be real homespun, the hat a genuine Panama, and the cigar a true Havana. This also he regarded as indispensable. "A shoddy suit," he used to say, "a Jappy hat, or a 'two-for' cigar never took in anybody worth taking in."

With this equipment, a nimble wit, and a profound knowledge of human nature, he attained the distinction of being the most accomplished "confidence man" known to the police of the Australian Colonies. Indeed, it may be doubted if London or even New York ever produced a criminal who was a finer artist in this particular department of crime.

I call him an artist advisedly. He loved his work—the cleverness of it, the spice of adventure in it—above all, the humour that was never absent in a single one of his "operations." It was neither the want of money nor the love of it that drove him to crime. During the greater part of his career he was comfortably off, and he had no extravagant habits. A combination of diseases, of which the most distressing was chronic asthma, compelled him to lead a simple and abstemious life; he never

indulged in those orgies of intemperance and debauchery in which so many professional criminals dissipate their gains.

The first of his many crimes (he preferred to call them "operations")—at any rate, the first that brought him into conflict with the police authorities, was a "deal" in merino ewes at the famous Homebush sales in Australia. The sale was advertised to commence at eleven a.m. A little after ten Parkinson strolled up to a pen of ewes, which an opulent-looking squatter was examining with evident appreciation. The two got into conversation, and Parkinson offered to sell the lot privately, and so cut out the auctioneer's commission. They completed the deal, crossed the road to the little branch bank, where a sale note was signed, and the price paid over—£160. Parkinson cashed the cheque, shook hands with his buyer and returned to the saleyards. That was daring—for the sheep were not his. But before eleven o'clock he had sold the same pen of merinos a second time to a second unsuspecting squatter—this time for £120—cashed the second cheque and got away with the proceeds of both sales. It was nearly a year before he was caught, and then he only received a sentence of two years, being able to pose as a first offender.

This crime, though its impudence filled the police with admiration, was crude work compared with subsequent operations, which showed much greater finesse and elaboration of details.

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It was many years later that I was first briefed to defend him. He was then past middle age—close on fifty.

His record at this time comprised nearly twenty convictions, and he had spent seventeen years—more than half of his adult life—in prisons and penitentiaries.

For nearly two years before committing the offence for which I defended him he had been employed as head shepherd on Four Rivers, a backblocks sheep-run in the South Island of New Zealand. The run changed owners, and Parkinson came to town, "fed up," as he expressed it, with the monotony of life out back, and still more with the monotony of being honest. "Two years on the straight," he said, "was beginning to make me feel a prig." Arrived in town, he laid out part of his Four Rivers cheque in a new suit, a new Panama, and a box of cigars. He called on a firm of land and stock agents in town; he had just taken up a run, he told them, down Four Rivers way, and was looking for a "line" of sheep. The stock agents had a "client," of course, who, equally of course, had the very thing required. Parkinson was to take the morning train for Springvale, some fifty miles away; there the client, Mr. McAllister, duly advised, would meet him and drive him to his station to inspect the sheep. After lunch at the homestead Parkinson was taken to see the sheep, which had been drafted for his inspection; and after the usual chaffering—he could talk sheep with the most experienced flock-owner—he agreed to buy the whole line at 15*s*. a head—£180 in all: delivery on trucks at Springvale the following Wednesday, payment in the meantime at the stock agents' in town.

On the railway platform at Springvale he bor-

rowed a sovereign from Mr. McAllister—he was short of money, he said, and might want a few shillings on the train; he would pay it with the rest to the agents in town. He shrewdly guessed that McAllister, a careful Scot, in his letter to his agents reporting the sale would certainly not omit to mention the loan.

Two days later Parkinson called on the agents, and informed them of what they had already learned by letter from McAllister, that he had bought the sheep for £180. He was in the act of filling in a cheque when—"That reminds me," he said, "I borrowed a sovereign from Mr. McAllister; I'll add a pound to the cheque—that will save me the trouble of a separate letter." Sure enough, McAllister's letter of advice had contained, as Parkinson intended it should, a postscript "I lent Mr. Parkinson £1; please collect it if he forgets."

As he was about to sign the cheque he appeared suddenly to catch sight of the office clock. "Damn it," he exclaimed, "it's after three and I've missed the bank. Most annoying too, as I have to catch a steamer south to-night, and shall want some money." The agents, of course, were delighted to oblige, and at once offered accommodation. Parkinson re-wrote his cheque for £201 and received £20 change. That was the last the agent saw of Parkinson till some nine months later when he faced him in the dock.

"What did the trick," said Parkinson, "was that loan of £1, the postscript in McAllister's letter and my prompt 'repayment.' Attention to detail is everything. Spare no pains to establish confidence; once it's established there is nothing

you can't do—even with the smartest of stock agents."

At the time he performed this operation, ostensibly for the sake of £21, he had a considerable sum to his credit at a savings bank—the balance of his hard-earned Four Rivers cheque. When awaiting trial he paid me some £30 over and above my fee, with a request to apply it in payment of some tradesmen's bills. He always made a point, he told me, of leaving no debts unpaid, if he could possibly help it, when he expected to go to gaol. At this period of his career he owned a reversionary interest worth some five thousand pounds in property in Tasmania, expectant upon the death of his old mother, and he had, of course, no difficulty in obtaining advances against it if he required money. But need of money never seems to have entered into the motives for his crimes; on the other hand, he boasted, as far as I know with truth, that he had never taken down a man who could not well afford it.

A conviction was inevitable, but what Parkinson feared was being declared an habitual criminal. Under the law in this Dominion the Court has power, on proof of a certain number of convictions for specified crimes, to declare the prisoner an habitual criminal and sentence him to detention in a reformatory prison until the Prisons Board, on proof of his reformation, elects to release him. It is the indeterminate duration of this sentence that criminals so dread. "Do all you can to save me from a 'Kath,'" were Parkinson's earnestly whispered instructions when the jury returned to the box. I had never till then heard this name for

the indeterminate sentence, which is now well established in prison slang. "Kath," *videlicet* "Kathleen Mavourneen," because:

It may be for years, and it may be for ever.

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But while most of his operations were concerned with sheep, in which his early training had made him an expert, he was by no means a pedantic "specialist." The operation in which he took the greatest pride was in fact entirely unconnected with sheep. He was "resting," as actors say, in one of the larger towns of New Zealand when his eye was caught by an advertisement.

"The Headmaster of the —— Boys' Grammar School will be in attendance on Monday at twelve noon to interview parents of new boys."

This suggested to Parkinson a novel stunt. He knew something of the Head from a waiter at the Club—the Warrigal—of which the Head was a member. The waiter had on one occasion shared lodgings with Parkinson when both chanced to be "doing time"; Parkinson, to whom no information ever came amiss, occasionally listened to the waiter's gossip about the Club and its members. Incidentally he learnt that membership and attendance were falling off of late. He provided himself with a calling card, on which he wrote "John Shand, Mount Palm Station, Otaio," and waited upon the Headmaster at the advertised hour. He had two sons, he said; the elder he destined for medicine, the younger had a fancy for engineering. He looked through a school prospectus, gravely discussed fees, etc., with the Head, and went into

detail as to the number of shirts, socks, and shoes with which his boys were to be provided. He thoroughly approved of compulsory drill; football —yes, for the elder, but Jim—he thought not—there had been a hint of heart trouble. "Mr. Shand" obviously made a good impression on the Head, who invited him to dine with him that same evening, since he was returning to Otaio and his broad acres on the following day. "At dinner," he told me, "I steered clear of scholastic topics; after seventeen years of gaol I couldn't trust my Latin quantities, besides, though I'd been to a good school as a youngster, I was expelled before I reached the lower fifth." He entertained his host, instead, with stories of confidence men and the tricks they had played on squatters of his acquaintance in Australia, and, incidentally, on himself. Most of the tricks were his own "operations"—all he did was to change parts, victimiser with victim. Towards ten o'clock he drew the conversation round to the Warrigal, and the falling-off in popularity and attendance of members. "Now to-day," he said, "I was there to breakfast and lunch, and yet I didn't see a single man I know—particularly awkward too, because I forgot to go to the bank this afternoon, and had run out of money: in fact, I had to borrow five shillings from Tom" (that was the waiter's name) "to pay my cab down here to-night." The Head at once offered to let him have some money; but Parkinson would not hear of troubling him—"Sure to be someone in the bridge-room when I get back." His host thought not; Monday was not a regular bridge night. "Better let me lend you some money." To this

courteous pressure "Mr. Shand" reluctantly yielded; wrote a cheque of his own and "lifted" the Head for £10. "Enough," as he generously said, "to get me home to Otaio to-morrow."

"Now that," said Parkinson, "is a job I'm proud of. Not because I lifted my host for a tenner; he was a simple old chap and any amateur could have mugged him; but I'd spent nearly half of my life in gaol and roughed it with the worst, yet I dined with a gentleman, passed an evening in decent society, and was never spotted."

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The confidence man usually works with one or more confederates. Parkinson thought this clumsy and inartistic, besides doubling the risk. In one operation, however, he departed from his rule and employed a confederate, though only in a minor part. That particular operation I have always regarded as the most finished of his many jobs.

Land and stock agents were his *bêtes noires*. "They are so jolly cocksure, these fellows," he used to say; "besides, they really are rather smart as a class, so there is some sport in taking them down."

He happened to be in D——ville at the time, and again it was an advertisement in a morning paper that set him thinking:

"WE ARE HUSTLERS!"
"WE SELL THE EARTH!"

So began the flaming screed in which Younghusband & Co. announced a long list of "desirable farm properties for sale on account of various clients." Also, of course, they held periodical stock sales.

Parkinson decided to hustle the hustlers; so he provided himself with a good leather wallet or pocket-book, with his *nom de guerre* printed in gold lettering on the cover, "Duncan Cameron, Boolawong Station, Darling Downs." With a little careful rubbing and soiling he gave the wallet a convincing appearance of use. He had a couple of Bank of Queensland notes; with some brown paper and these as an outer covering he made what looked like a good fat wad of bank-notes. His confederate of the moment was attired as a navvy, his moleskin trousers carefully hitched up under the knees with straps after the manner of a road-mender or quarry-worker. An old shovel, purchased at a second-hand shop, completed the equipment of this "honest toiler." He attached particular importance to the straps below the knees; trifles, no doubt, but important nevertheless—just the kind of detail that "adds verisimilitude to an otherwise bald and unconvincing narrative." "Mr. Cameron" called in due course upon the hustlers. His Harris tweed and Panama, not to mention the aroma of the inevitable Havana, procured him, as usual, special consideration. He was at once shown to the private sanctum of "one of our principals, sir, Mr. Younghusband."

"Well, sir!" began "Mr. Cameron," "I've been reading your advert. and I like your style. Hustlers for mine, every time."

Mr. Younghusband was duly impressed—a new client obviously of some importance. "Mr. Cameron," it appeared, had a large mob of cattle travelling on their way from out back to the coast for market—several hundreds of them, all prime

beasts. A wire from the drovers that morning reported the cattle at Gundagai ; they should reach D——ville in good time for next week's stock sale.

" Mr. Cameron " furnished particulars of numbers and brands, and the eager sales clerk entered these in the firm's books. " Mr. Cameron " even insisted upon drafting the advertisements—there must be no stint in advertising, that was bad business. They were to be sold " under instructions from ' Mr. Duncan Cameron ' as part of the famous Boolawong herds." " A little skite," observed the sagacious " Cameron," " never does any harm."

" I like your style," he repeated, as he rose to go, " and I'll be glad to push your firm all I know up the Boolawong." Thereupon Mr. Younghusband gave him half a dozen of the firm's business cards, with a request that his client would be so obliging as to distribute them. What more natural than that at this stage " Mr. Cameron " should produce his wallet, open it, and slip the cards inside the flap and so, quite by accident, expose to view the " fat " wad of bank-notes.

" By Jove," said Younghusband, " that's a prosperous looking wad of notes you've got there."

" Mr. Cameron " explained that they belonged to his missus, got them at the lawyer's that morning—a little mortgage had been paid off.

" Better pay it into our account ; we'll be pleased to remit to your bank at Boolawong without exchange. I know what you cattlemen from the out back are when you come into town and get on the wine."

" Mr. Cameron " quietly declined the offer ; he guessed he knew his way about ; he was no tender-

foot ; the townies were not going to lamb him down. Anyhow, he was going back by the morning train, and reckoned he could take care of himself as well as the best.

Next day, during the forenoon, a horny-handed son of toil, carrying his shovel, seemingly a road-cleaner or something of the sort, called at the office of Messrs. Younghusband & Co.

" Mayhap you know a ' Mr. Duncan Cameron,' of Boolawong ? " he inquired.

" A client of ours," was the prompt response of the clerk.

" Well, here's a pocket-book of his with his name in ; I found it this morning in the gutter up in —— Street," mentioning a street of sinister repute. " Nothing in it except some of your cards, so I thought I'd just bring it along."

The price of two drinks rewarded the honest toiler.

Later in the day in came " Mr. Duncan Cameron," still in Harris tweeds, still in the Panama, but a sadly soiled and bespattered Panama, while the tweeds looked as if they had been slept in, and that too in a gutter. " Mr. Duncan Cameron," blear-eyed and unshaven, looked a woebegone figure. " Fair tore up," as he himself expressed it.

Mr. Younghusband made sympathetic inquiries.

" My oath ! But I wish I had taken your advice yesterday. I don't seem to know quite what happened somehow, but I had six or nine at the Metropole, and then I picked up with some rum coves, and we drifted round ; had a few more at the Golden Fleece, and then—well, I somehow lost count, but we finished up at a house in ——

Street. When I woke up I was in the street, cleaned out; they'd got my watch, they'd got my pencil-case, and my pocket-book——"

"We've got your pocket-book," interjected Mr. Younghusband, and explained.

"Well, that's something anyhow, seeing it was a birthday present from the missus. But I had a hundred and fifty pounds in it, and all her money, too."

Of course there was nothing else for it; so valuable a client must be accommodated. The suggestion came entirely from the obliging Mr. Younghusband. The cattle next week, on any view of the market, would certainly realise something in four figures.

"An advance on the cattle? Why, certainly."

And so "Mr. Duncan Cameron," of Boolawong Station, Darling Downs, left the office of those obliging hustlers with £200 in his pocket. And hustle as they might, and for the next few days they did indeed hustle, they never saw "Mr. Duncan Cameron" nor their £200—still less those prime beasts from the famous Boolawong herd, travelling coastwards from the "Never-never Land," out back from Gundagai!

My "friend" Parkinson? Well, why not? It is true he had a long criminal record; but it is also true that in that long list there is no hint of violence to either person or property, of offences against women, or of petty acts of dishonesty. Me at least he did not take down; I found him always frank. I knew him to be often generous. He had a kind heart, a droll sense of humour, and his crimes all had their origin in a perverse spirit of adventure.

He deserved all he got in the way of punishment; but he never "groused," whatever came to him.

After serving three years of his "Kath" he was liberated on condition that he left the Colony, and he came to bid me good-bye.

"I am out at last, and this time it's for good. I'm never going back."

"What, never!" I began.

"You may smile," he said, "but it's true. No, I'm not reformed, and I haven't been converted. It's not religion, it's asthma. I simply couldn't face another winter in the cells."

"How will you find scope for—well, for your genius, for bluff—your—er—special talents?"

"I am going into a line where I can employ every one of my special talents, and that without being sent to gaol for it."

"As how?"

"I intend"—and he paused for a moment to grin at me—"I intend to turn land and stock agent."

And he kept his word.

Chapter XX

A MURDER CHARGE THAT FAILED

ON the morning of December 8th, 1917, Christchurch was startled by the news of a brutal murder. The victim was a child, a boy about three years of age, who had been since he was a few weeks old the inmate of a private receiving-home for foundlings in a cottage in the suburb of Addington. Under our law with regard to infants, State foundlings may be boarded out under police supervision with private families who are licensed to receive them.

At eight o'clock in the morning of the day in question the child was missing from his bed, and presently his dead body was found lying in a potato patch at the back of the house. The face had been smashed in with such force that the head was sunk up to the ears in the newly dug ground. Close by lay a garden spade, covered with blood, and a large screw-wrench or spanner similarly stained. There were footprints of stockinged or bare feet leading from the back door of the cottage to the place where the body was found. Medical experts thought the child had been dead about four hours.

At eight o'clock on the same evening the child's mother was arrested at the waiting-room and

parcels office connected with the Christchurch Tramway Shelter in Cathedral Square, in the centre of the town. A few days later a brother of the accused woman, a driver employed by a firm of carriers in the North Island, came down to Christchurch to see me, and said he desired to retain my services for the defence of his sister. I had made it a rule, since my marriage, not to accept retainers in child-murder cases; but instead of refusing to act for him, which would have appeared ungracious, I named a fee which I felt confident would be prohibitive in the case of a man in his circumstances. He expressed himself as deeply disappointed, told me frankly he could not find the fee, and returned the same evening to the North Island.

A few days later he came back, to my surprise, and brought the fee with him. He had raised part of it by a mortgage on his cottage home, and his employers, with whom he had been for many years, had lent him the rest. I had placed myself in an awkward dilemma. I pointed out that with the substantial fee he was now able to pay, he could secure the services of a very eminent criminal Counsel from Dunedin, whom I named, who had a large experience in such cases, and who had no equal at the New Zealand Bar in handling them. But my client was obdurate. He had, he said, with great difficulty raised the fee I had named, and he held me to my bargain. He wanted me and no one else. I found myself for the first time since I had been at the Bar saddled with the responsibility of defending a person accused of a crime for which, if convicted, she would certainly be executed. It was a gruesome situation, which I loathed, but I

saw no honourable way of escape from the position in which my own foolishness had placed me.

Prima facie, fortunately, the case for the Crown was weak, and but for a circumstance to which I shall presently have to refer, there should be no difficulty in securing an acquittal.

The following were the main points upon which the Crown relied: The child was received into a home as a foundling on February 6th, 1915, at three weeks old. From that date till November 30th, 1917, the accused had never seen it. It was a heavy, well-grown boy. She was a slim, delicate-looking girl of very slight build. She had been in domestic service in various parts of the North Island, and had successfully eluded the attempts of the police to serve her with maintenance proceedings. Towards the end of 1917, however, she was served with a summons, and after a good deal of reluctance and demur on her part, consented on November 27th to a maintenance order of 5*s*. a week being made against her. She was anxious that no publicity should be given to the proceedings, and wanted to be assured that the order would not include past maintenance, but should operate as from the day on which it was made. Being satisfied on this point, she finally consented to the order, and on the afternoon of December 8th, the day when the child had been murdered, and exactly a fortnight after the making of the order, she posted a 10*s*. note, addressed to the Clerk of the Court, with her name written on the outside of the envelope.

Some weeks before the service of the summons upon her she had made application to the central office of the Christchurch Receiving Home for

permission to see her child. She did not know of the address where the child was boarded out, and had not in fact seen it since a few weeks after its birth. She explained that her reason for now desiring to see it was that a friend of hers, a widower with several children, residing in the North Island, wished to adopt the child. This, of course, would relieve her of the obligation of the weekly payments for maintenance in the home. Her importunity finally prevailed, and an appointment was made with her to call at the central office of the Receiving Home at Christchurch on the afternoon of December 6th, when the child would be brought there for her to see. She saw the child for ten or fifteen minutes ; she was told the name of the people with whom it was boarded out, but, for reasons that will presently appear, no hint was given her of their address.

She left the Home before the child, but was seen loitering in the neighbourhood of the tramway stop where the nurse-girl, in whose charge it was, boarded the tram, on their way back to its home. Seeing the mother on the same tram, the girl got off and returned to the Receiving Home with the child. The authorities telephoned for a taxi and gave the man strict injunctions not to tell anyone where he was taking his fare. On the following day the accused spoke to the taxi-driver on his stand and sought to obtain the information from him ; but he swore positively that he had told her nothing.

On that same day, however, December 7th, the accused had apparently found out from some source in what quarter of the town the foster-parents were living, because she was seen loitering in the neighbourhood, and accosted two little girls who happened

to be the children of the foster-parents, and asked them where they lived. She was taken to the street and shown the house, and quite frankly gave the children her own name.

For a few days prior to this date the accused had been in service in a house in Christchurch. On the afternoon of the 7th a new dress arrived for her from Wellington by parcel post. It was a cream serge dress with a thin black stripe. She told her mistress that she was leaving that day, and did so without further notice. She packed her other belongings into a small suitcase, and put on the serge dress which had just arrived by post.

On the afternoon of the 7th she left the suitcase in the parcels office at the Tramway Shelter, paying the usual fee therefor, and getting the usual ticket. She next visited a boarding-house for "casuals" where she had stayed once before, and booked a room for the night. This room, however, was not slept in, and there was no evidence as to where she had spent the night between the 7th and 8th—that is to say, the night when the child was murdered.

On the morning of the 8th, between eight and nine o'clock, she called on a lady in Christchurch, a Mrs. B——, in response to an advertisement for a housemaid for the country. Mrs. B—— gave evidence of the interview. The girl had no references, but said that she could procure them. She was asked about her past experience in service, and finally, after fifteen minutes' conversation, Mrs. B—— engaged her and gave her instructions to report herself on the following Monday. Mrs. B—— remembered that at the interview she wore a white serge dress with a thin black stripe, and that she

looked neat and tidy; but both before the Magistrate and before the jury in the Supreme Court Mrs. B—— made no other comment upon the condition or appearance of her clothes.

That evening at eight o'clock—that is to say, some sixteen hours after the murder had been committed, and about twelve hours after the interview with Mrs. B——, she called at the parcels office, surrendered her ticket, and obtained her suitcase. She was thereupon arrested.

She made no admissions of any sort on her arrest, though she gave her correct name. In answer to the question as to where she had spent the preceding night, she merely said, "Why should I tell you? It is my business where I was last night."

On being charged with murder, she spoke no word.

At the time of the arrest she was wearing the same white serge dress with the black stripe that she had worn the previous afternoon, and that she had been wearing that morning when she called upon Mrs. B——. As all her luggage other than that dress was in the suitcase in the tramways parcels office, it is obvious that if she committed the crime she must have been wearing the same white dress at that time as she wore when arrested. The detective swore that the front of the skirt to the depth of about 8 to 10 inches was quite damp and wrinkled, as if it had been recently washed. But Mrs. B—— apparently noticed nothing peculiar about her dress when she called on her at eight o'clock that morning. If the dress had blood-stains on the lower part of the front of it at, say, three or four in the morning,

she would certainly have washed it there and then, one would think. And if she had done so, it would certainly have dried by eight o'clock in the evening, for December 8th was a scorching hot day. The detective also swore that her stockings were damp in the front, very dirty from wet soil, and that there were seeds of grass stuck in them much like the seeds of grass that grew in the garden surrounding the cottage.

The inmates of the cottage on the night of the murder were the following: in an inner room in separate beds there slept three foundling boys, the murdered child of about three, a boy between four and five, and a boy of ten. In a room adjoining the children's room, through which alone access could be had to it, slept two girls of six and fourteen. In another room opening into the passage-way, down which the guilty one must have passed, slept a young man, some twenty years of age; whilst in the kitchen, through which alone egress into the yard could be had, slept a boy, a son of the house, some sixteen years of age. What must have happened was this: the murderer or murderess entered the house by the kitchen door, passed through the kitchen where a lad was lying asleep, passed the open door of the boarder's room, passed through a room where two girls lay, and, entering the boys' room, selected by no better aid than moonlight the right child among three, carried him without waking him through the same rooms, passed the same five sleeping people again without waking any of them, and then did the child to death by means of the spade and the spanner in the manner already described, again without making any noise.

Such was substantially the direct evidence upon which the case for the Crown depended.

On this evidence alone no jury would have convicted. A jury of trained minds, a jury of lawyers, for example, would, I think, have acquitted without leaving the box. Had I been Judge instead of Counsel, I should have deemed it my duty to tell the jury that they could not safely convict on the evidence. The Crown relied on motive, but the wish to escape a weekly payment of five shillings could hardly be regarded seriously as a motive for such a crime.

As to preparation for the crime, there was, it is true, evidence of obstinate and persistent efforts to ascertain where exactly the child was located ; but as will be seen presently, she had strong reasons, very natural in a woman, for resenting the mystery with which the child's whereabouts were enshrouded. Finally, the inconsistent evidence as to marks of washing on the dress, the girl's failure to account for her whereabouts on the night of December 7th–8th, her engaging a room for that night and not occupying it—these were matters of suspicion indeed, but were all of them capable of an explanation consistent with innocence of the crime, especially if the girl were a person of loose character who might well have strong grounds for reticence in answering police inquiries.

But the Crown's case did not, in fact, rest on this evidence. It rested on evidence which was admitted by the trial Judge, after strong protest on my part, and which I still think was wrongly admitted. Had the jury convicted the accused, I should certainly have applied to have the question of its admissi-

bility reserved for the Court of Appeal, and, with much respect for the trial Judge, I venture to believe that tribunal would have come to a different conclusion. The evidence I refer to was as follows :

The child was born on January 11th, 1915. On February 4th the mother left the lying-in home, carrying her baby with her. At a place called Dallington, near Christchurch, half suburban, half dairy-farming district, the River Avon runs between willows, with a public road along one bank. The drop from the crown of the road to the surface of the water is about 14 feet. The bank is covered with long grass, weeds, and willow saplings. The willow trees themselves, which overhang the river, grow out from the bank just at the water's edge.

Some time during the afternoon of February 4th the girl went down this bank and deposited the baby, warmly wrapped in a shawl, on the bank near the roots of a willow tree, and there left it. At nine o'clock that night a farmer on his way home heard an infant's cry from the direction of the river. He procured a lantern, but even with its aid it took him half an hour to find the baby.

The mother of the child managed to get away to the North Island. It was not till the following June that she was traced to a town called Palmerston North, and there arrested. She was brought to Christchurch and charged with abandoning her child. To this charge she pleaded guilty, was sentenced to two years' imprisonment, but was released in January 1917. It was not until some time towards the end of that year that the police again got in touch with her, and began to threaten her with civil proceedings about maintenance.

The Crown proposed to lead evidence not merely of the fact that the accused had been convicted of abandoning the same child nearly three years before, but of all the circumstances associated with her conduct on that occasion. The Crown produced a survey plan of the locality showing its loneliness, the remoteness of the spot from houses, the proximity of the tree to the water's edge. The farmer was also called to speak as to the difficulty he had in finding the child in the dark. I relied upon the doctrine laid down in "*Rex* v. *Bond*" (1906, 2 K.B. 389), and argued that such an act was too remote in time to constitute evidence of similar motive.

To my astonishment, however, the trial Judge, Chapman J., now Sir Frederick Revens Chapman, held the evidence admissible as showing the same motive and the same form of malice towards the same individual throughout, and I had to make the best of it. In so holding, the Judge, in my opinion, went further than was warranted by any of the earlier authorities, and my satisfaction with the verdict of "Not Guilty" was not a little damped by the fact that this robbed me of the opportunity of testing the Judge's ruling in the Court of Appeal, or if need be, in the Privy Council.[1] The admissibility of the evidence was argued by my friend Mr. S. G. Raymond, K.C., who prosecuted on behalf of the Crown. But the point was taken originally by the Judge himself, and I have often wondered whether my learned and very able opponent felt quite easy in his own mind about the decision, and whether he was not in fact a good deal relieved when the jury brought in a verdict of "Not Guilty."

[1] New Zealand Gazette Law Reports, 1918, p. 132.

The task before me was no light one, but yet I felt, and I still feel, that a conviction upon this evidence would not be safe. The difficulty was not so much that the jury were made acquainted in the course of the trial with the fact of a previous conviction in respect of the same child, but that they had placed before them a body of evidence three years old which could not be adequately tested by cross-examination nor rebutted, and from which the jury might easily infer something the accused had neither pleaded guilty to nor been convicted of, namely, an attempt to murder the child. I must contrive somehow to make that appeal to the sporting instinct which seldom fails with a British jury, to make them realise that the introduction of this stale evidence to suggest motive was not giving the accused woman a fair chance. I must also, before the time came for my address, create an atmosphere of protectiveness ; no appeal to sympathy would, I felt sure, weigh with that jury, nor was it warranted by the circumstances of the case. But it should be possible, with this unusual kind of evidence led against her, to make them feel subtly that they must protect the woman where the law appeared to press hard upon her.

The surest way of creating this protective attitude in the minds of the jury was to appear to neglect her interests myself. It was, of course, no part of my case to attack or even throw doubt upon the evidence for the Crown. It was not the truthfulness of that evidence that was in question, it was the inferences to be drawn from it. There were in all twenty-seven witnesses examined for the Crown ; I cross-examined only six or seven of them, and that very briefly.

Here let me digress for a moment to refer to a question which I did not ask, though strongly tempted to do so, but which, had I asked it, would have made impossible what afterwards proved to be one of the most effective parts of my address to the jury.

It will be remembered that between 8 a.m. and 9 a.m. on December 8th the accused had an interview with Mrs. B——. It was clear that the white serge dress she wore at that interview was the dress she must have worn if and when she committed the crime. Mrs. B—— neither in the Court below nor before the jury made any remark upon the appearance or condition of her clothes. Yet the detective swore that when he arrested her at 8 o'clock in the evening the front of that very dress to a depth of 8 to 10 inches was damp and wrinkled. In this matter the police evidence was corroborated by that of a medical man who saw the accused within half an hour of her arrest. If Mrs. B—— had observed anything exceptional about the girl's dress, Counsel for the Crown would surely have elicited from her such an important piece of evidence. Here was my temptation. If I had dared to ask Mrs. B—— whether she had noticed blood-stains or marks of recent washing on the dress, and if she had answered "No," the case for the Crown would have been enormously weakened. I knew Mrs. B—— personally; she was not the kind of woman who would engage a domestic servant without first looking her over from head to foot for signs of untidiness or slovenliness in her attire. I had actually made up my mind to take the risk, but at the last moment intuition came to my rescue

and I didn't. When the jury had retired, I spoke to Mrs. B—— and asked her what her answer would have been if I had put a question to her upon the matter, and this is what she said :

"I should have answered that when the girl came to see me I was in bed ; the whole time we were speaking she stood by the side of the bed, *and I never saw anything of her dress below the knee.*"

As one witness after another left the box with the laconic "No questions, your Honour," from me, the jury must have begun to wonder whether I was going to put up a fight for the woman at all. I had, as a matter of fact, personally attended the preliminary hearing in the lower Court, and knew exactly the case to be presented against the accused. It was not even necessary, therefore, to take a note, and I pointedly abstained from doing so. I sat with my back to the jury, and during the greater part of the two days occupied by the Crown witnesses I was apparently the most indifferent person in the Court, drawing horses on the blotting-pad in front of me, wiping my monocle, and occasionally appearing to stifle a yawn. The climax of my apparent indifference must have been reached, I think, when at the close of the Crown's case the Judge asked the usual question, "Do you call evidence for the defence ?" and I answered, as though awakened out of a reverie and in a tone intended to indicate polite boredom, "Er—no your Honour—oh no." If I know anything at all of the mental processes of an average jury, I venture to think that I had got those twelve men into a mood of indignant protest against my lackadaisical indifference, and a fixed determination to see to

it that they, at any rate, would overlook nothing that might tell in her favour.

After Counsel for the Crown had summed up his case I rose to address the jury. I had not a scrap of note to refer to. I spoke to them earnestly for a few moments upon the very grave responsibility which now rested on them, and them alone, and then settled down to my address. Before many minutes had passed I felt the atmosphere subtly changed. They realised that for all my apparent indifference I knew all about that case, and in the course of a speech which lasted three hours I don't think I lost their attention for one moment. I made no appeals to sympathy ; there was no allusion to the sex of the accused except where that was absolutely necessary. I made no use of rhetoric, and I don't think there was a single passage in my address that the most friendly critic could have described as eloquent. It was from beginning to end a colourless, unemotional, but I hope logical and closely reasoned analysis of the evidence for the Crown.

The real difficulty of the case, the admission of the evidence to which I had objected, I grappled with at the very outset. As I regard the whole case, and particularly this feature of it, as an interesting illustration of the attitude of a jury to questions of proof, I make no apology for reproducing here that portion of my address which refers to it. I am able to do so practically verbatim, thanks to the very excellent shorthand report made by one of the newspaper representatives present at the trial.

You are doubtless acquainted with that broad principle in our law which forbids the introduction in a trial for one crime of evidence that the accused

has at some time or other committed another crime. Our law in general guards an accused person with jealous care from the prejudice and unfairness that might arise from such a course. That is a principle of British law with which you are doubtless fully acquainted. It is not so in French law, nor in German law, nor, I think, in any law other than British law. And it is characteristically British. It does no doubt lead to many a guilty person escaping justice. But it protects infinitely more innocent persons from injustice. It is the expression in our jurisprudence of that same principle which in our social life we prize so highly and which we proudly call " the British sporting instinct."

But, gentlemen, there are exceptions to that principle, and one is this, that on a charge of murder, for example, evidence may be given of previous acts, attempts, assaults, threats, or expressions of ill-will which suggest the motive which instigated the commission of the offence with which the accused is now charged. And such previous acts may be proved, notwithstanding that they involve proof of an earlier crime, provided that the two sets of circumstances are so closely related, so mixed up together, as to form practically one part of a chain, one series of acts constituting a single transaction.

You heard me take formal objection to the evidence, and you heard his Honour overrule that objection. I ventured to submit that the present case did not come within the exception. But his Honour has ruled against me, and the evidence, on that ruling, has been properly tendered and admitted.

It is for you, however, to say what weight is to be attached to that evidence. You will remember, gentlemen, that it is relevant to motive, and *to nothing else than motive.*

Now, what is it you are asked to infer? Why,

this : that the motive which induced this woman to abandon an illegitimate child at three weeks persisted in her mind and instigated her to murder the same child at three years—and to murder it in a peculiarly inhuman and revolting manner.

Is that an inference which appeals to you, gentlemen, as a necessary inference—or even as a common-sense inference ? We know, and it is only too true, that girls who have given birth to children out of wedlock do unhappily abandon them in a large number of cases. Sometimes they abandon their infants by giving them in adoption : that is not a crime, but it is an immoral thing to do—much more immoral, I venture to think, than the act of foolish passion which led to their conception. Others procure their premature miscarriage ; others conceal their birth ; others abandon them as this woman did by the roadside ; others—and these are the most wicked—murder them at birth.

But what is the motive in each of these cases ? Shame, desire to be rid of the burden of motherhood, mental distress, perhaps, and reaction from a recent confinement. Such cases are unhappily numerous. But how many of such mothers who soon after childbirth desert their children or even put them to death in their distraction—how many of such would after a three-year interval brutally murder that same child ?

This child was not a burden to its mother—unless you can construe into a burden an obligation to pay a few shillings a week for its keep ; the shame had been incurred ; the punishment for the abandonment had been suffered ; the mental distress of childbirth must have long since passed.

Can you, gentlemen, find any similarity, any analogy, any relevance whatever, between the motives which instigated this girl to leave her baby in a tree by the roadside the very day she left a

maternity home, and the inhuman motives which must have instigated her, if she be guilty, in doing it to death in this unspeakably brutal way nearly three years later?

I suggest, gentlemen, you will come to the conclusion that the motives in the two cases are so widely different, that the circumstances have so changed, that so long a time has intervened, that it would be most unsafe to allow your minds to be influenced in the least degree by the proof, which has been admitted, of this earlier crime.

His Honour will direct you that in considering it you must consider it only from the point of view of motive; you must not let it influence you merely as showing that this woman is not a good woman, that she has offended against the law before. Well, gentlemen, those refinements are easy enough to make if you have trained legal minds. But they are dangerous for a layman: the danger is that you may not succeed in making the distinction, that you may be unconsciously prejudiced and unfairly biased by the evidence. If you agree with me in this, you will follow the only safe course and dismiss this portion of the evidence from your consideration as early as possible in your discussion, and proceed to consider, as I am now about to do, that part of the evidence, and that part only, which bears directly on the crime which someone undoubtedly did commit in the early hours of the 8th December last.

Chapter XXI

THE MYSTERY OF THE SEVERED HAND

EIGHT miles from Christchurch on the sea-coast there is a popular watering-place called Sumner. It nestles in a pretty cove or bay between the estuary of the Avon and Heathcote Rivers to the north and a spur of the Lyttelton Hills, called Scarborough, which juts into the sea to the south, and terminates in a bold and precipitous bluff. Between the estuary and the bluff is a curving beach of soft sand—a favourite bathing-place for Christchurch residents, though known to be dangerous in certain states of the tide.

In the years 1885–6 an enterprising resident of Sumner was engaged in constructing what was afterwards known as " Bell's Baths." He enclosed within wooden piles a portion of the sea sheltered by Scarborough bluff, and invited the public for a small fee to bathe within this enclosure, safely protected from sharks and treacherous currents.

To the south of Sumner, on the far side of the Scarborough spur, is another cove or bay called " Taylor's Mistake."

On the afternoon of October 10th, 1885, a man called Arthur Rannage Howard went from Christchurch to Sumner. He seems to have made a

point of telling several people *en route* that he was going down to have a swim. This caused some surprise as it was an exceedingly boisterous day, but then he was reputed to be a good swimmer. He walked part of the way with a shoemaker—W. W. Tanner, a very intelligent and observant man, who afterwards, by the way, sat for many years in Parliament. This man took particular note of Howard's clothes and also of a silver watch with a gold chain attached, which he took out from his pocket in order to see the time. He told Tanner, amongst other things, that he intended to return to Christchurch after his swim by the six o'clock coach.

No one appears to have noticed Howard in the vicinity of Bell's Baths during that afternoon ; but early next morning, at about six o'clock, a boy discovered, lying neatly folded in a heap on the wooden pier at the seaward end of the baths, a man's clothes. In the waistcoat pocket was found a silver watch attached to a gold chain. Several people who had seen Howard the previous afternoon at Sumner had no difficulty in recognising these clothes as the clothes he had been wearing, and Tanner was able without hesitation to identify the silver watch and gold chain.

Obviously the unfortunate man had lost his life. He had either been swept to sea by a current too strong for him, or had been attacked by one of the many sharks that were said to abound in the vicinity. It became known that he was a married man with two young children, and that he was employed as a fitter in the Government Railway Workshops near Christchurch. Sympathetic inquiries were set on foot as to what provision he had been able to make

for his widow and children, and it appeared that his life was well insured. Search was made for the body; but no trace of it was found, even though diligence was stimulated by the following advertisement, which appeared in one of the newspapers a few days after the fatality:

£50 REWARD.—Re Arthur Howard, drowned at Sumner on Saturday last. The above reward will be given for the recovery of the body or the first portion received thereof recognisable. Apply *Times* Office.

The wording of this advertisement and the unusually large amount of the reward offered stimulated public curiosity, and it was soon known in the town that Howard's life was insured in three separate policies for sums amounting to £2,400. All the insurances had been effected within a year or eighteen months, and the premiums for the three aggregated £70 per year. All three policies, within a few months of being taken out, had been transferred into the name of his wife, Sarah Howard. All she had to do, therefore, to obtain the money, was to furnish satisfactory proof of death without the necessity of taking out probate or letters of administration. But when the three insurance companies got together and learned that the wages of the insured were but 9*s*. per day, and that he was therefore paying away in premiums more than half of his total earnings, they naturally became suspicious and refused to pay. It was then, apparently, that Mrs. Howard inserted the advertisement.

Things remained in this condition of suspense

till December 16th, when public interest in the disappearance of Howard was once more aroused. On that day, which was a public holiday, two brothers named Godfrey with their sons drove to Sumner, and, leaving horse and trap there, walked over the Scarborough Hill into Taylor's Mistake, intending to spend the day fishing there. When they got down to the cove the boys went on to the other side of the bay, while the Godfrey men remained talking at the foot of the Scarborough rocks.

Presently, according to the account given by Elisha Godfrey, there appeared from behind the rocks a man who, they said, was a stranger to them. He wore blue goggles and a wig. His garments were all too large for his body and looked, according to Elisha Godfrey, as though he was deliberately disguised. This is the account, or rather one of the accounts, which Elisha gave to the police of the dramatic appearance of the mysterious stranger:

SUDDENLY a man appeared on the rocks from the beach. He spoke to us and said, "My God! come here; there's a man's hand on the beach." I went to him at once. He then showed me the hand as it was lying in the sand amongst the weeds, within about a yard from the rocks, at the corner, lying flat on the sand. I remarked, after looking at it, "That is Howard's hand, who was drowned at Sumner." The man said, "Poor fellow!—poor fellow!" I said to the man, "What is to be done with it!" He answered and said, "I don't want to have anything to do with it. I hold a high position in town, and it would not do for it to be known I was here." I said, "If you won't have anything to do with it, I will see to it and take it over to Christchurch to the Inspector." I looked to see

what I could put it in. He saw me looking, and I said I was looking for something to put it in, and he immediately pulled a newspaper out of his pocket and handed it to me. I stooped down and put the hand in the newspaper. It had the ring on then. The man begged of me to promise I would not let anyone know he was there, that if there was any reward for finding it I could do as I liked with it; that he was in a good position and had plenty of money and did not want the reward, but did not wish to have anything to do with it. The man had a small parcel under his arm, something like a worn piece of canvas glazed. It was a kind of square parcel. He was about going away when I said, " I would like to send a telegram to the Inspector of Police, and either of us should go over to Sumner to send the message by telephone." The man then said, " I am going to Sumner, and will see to that."

This was about two o'clock in the afternoon. The Godfreys apparently did not allow their gruesome find to interfere with their picnic, for nearly an hour later they were still fishing when the mysterious stranger came back over the hill. " He asked both of us more impressively than before not to let anyone know he had been there. He continued begging us not to let anyone know he was there, as he did not want to have anything at all to do with it." At the close of the day the Godfreys and the boys drove up to town with their parcel and took it to the police station. They said nothing to the police about the mysterious stranger at that time, but left the authorities to understand that they had found the hand themselves by chance on the beach.

The hand—a left—had been severed from the

arm a few inches above the wrist. On the third finger was a ring, apparently of gold, in the shape of a strap and buckle. On removing the ring the initials " A. H." in Roman letters were found on the inside. When a few days after the discovery of the hand the police showed it to Mrs. Howard, she became very excited and apparently hysterical, and said at once that she recognised her husband's hand —there was no doubt about it.

Several people saw the mysterious stranger in goggles and wig returning from Taylor's Mistake to Christchurch on the afternoon of the 16th, but though they were strangers to him he accosted them and told them that " Howard's hand " had been found, that two men named Godfrey had found it, and even showed these strangers a piece of paper with Godfrey's name and address on it, and said they had asked him to telephone to the police to say they were coming into town with the hand. It appeared afterwards that Mrs. Howard, on the previous day, December 15th, had received a letter from " a friend " asking her to meet him in Cathedral Square, Christchurch, as he had found some cheap lodgings for her. When questioned on this point by the police, she said she did not go to meet the writer of the letter as the hand had turned up in the meantime. Now, news of the finding of the hand at Taylor's Mistake could not have reached town till late in the afternoon of the 16th, so Mrs. Howard either lied about the matter, or she knew beforehand that convenient arrangements had been made for the hand to be found on the beach at Taylor's Mistake. The police ascertained also that Mrs. Howard, on the 18th December, went for a

walk with " the mysterious stranger " in goggles and wig, and spent three hours in his company.

No less than ten doctors examined that hand on behalf of insurance companies and other persons interested, and a joint report signed by them all was put in evidence at the inquest, which was solemnly held on the severed hand. There was some difference of opinion among the doctors on minor points, and many learned terms were employed to describe the simple facts they had observed. The drowning took place, if at all, on October 10th. The hand was discovered, cast up by the sea, on December 16th, nearly eight weeks later. The appearance of the hand was quite inconsistent with its having been dead so long. But then, what would be the effect of sea-water in preserving it? Here there was a sharp difference of opinion. The initials inside the ring, " A. H.," had not been engraved by a professional with an engraver's tool, but by an amateur with a clumsy instrument. Several jewellers were of opinion that the engraving was very recent, and quite inconsistent in its appearance with the ring having been in the sea for eight weeks. It was hoped, no doubt, that the insurance companies would come to the conclusion that the hand had been severed from Howard's body, or Howard's body severed from the hand, by the teeth of a shark, and would then echo the words of the mysterious stranger, " Poor fellow !—poor fellow ! " and promptly pay up. But that is not the way of insurance companies or of their medical experts; and these gentlemen had no difficulty in satisfying their confrères that the bones of the arm had been severed not by the teeth of any shark known to

science, but quite unmistakably by the teeth of a hand-saw. What proved the most difficult obstacle to Mrs. Howard receiving that £2,400 was the opinion of the ten medical experts, unanimous, I believe, though necessarily conjectural, that the hand was the hand of a woman.

On the evening of October 10th, the day on which Howard was supposed to have been drowned at Bell's Baths, a man who called himself Watt left Lyttelton for Wellington by a ferry steamer. He went by train into the Wairarapa, a farming district north of Wellington, of which Masterton is the chief town. Between the middle of October and the end of the year he was engaged casually as a carpenter and general labourer on several farms in the district. It was observed that he wore a wig. It was also noted as peculiar that he always insisted upon having a separate bedroom. He left one job because his employer refused to put up a partition in the sleeping apartment separating the end he occupied from the rest where his working mates slept. While in the employ of a Mr. Cameron of Te Oreore station he learned that a fellow-employee was going on a visit to Christchurch, and requested him to deliver some letters for him in that town. He got Mr. Cameron's brother to address several envelopes for him to—

Mr. J. Howard,
1st Brick House,
Battersea St.,
Off Colombo St.,
Christchurch.

He also got Mr. Cameron to write the letters. He explained that since he had met with an accident in

which he lost his right thumb he was not much good at writing. One letter simply explained that the enclosed £2 was in repayment of a loan. To the fellow-workman who was going to Christchurch he gave very particular instructions as to the delivery of the letter. Unless he could find either Mr. or Mrs. Howard personally and deliver it with his own hand, he was to bring it back with him to the North Island, and on no account to post it. All this might have aroused suspicion, but for the very plausible explanation he offered. He was a sailor-man, he explained, who had deserted from a Scotch vessel then lying in Port Chalmers, Dunedin. The police, he said, were on his track. They knew the Howards had befriended him and might open letters addressed to them through the post, and so he would get them into trouble, besides risking being captured himself. The messenger did in fact find Mrs. Howard in Christchurch and gave her the letter. When she opened it she seemed to be much agitated, but hastened to explain that it was a note enclosing £2 which her husband had lent to "Mr. Watt."

"Mr. Watt" went from one job to another in the Wairarapa. At one place he made the acquaintance of a station cook called Beard, and to him he made a very extraordinary proposal. He called on this man shortly before daybreak one Sunday morning and said that he wanted him to accompany him to a cemetery to open up a grave. This is Beard's account of the matter :

THERE was a man who had arranged with him to go to see if he could recognise a man who had died in the hospital—to see if it was a man who had

some property in some part of Germany. He told me the name of the dead man, but he did not tell me the name of the person who had made the appointment. I asked him if I knew the man, and he said he did not think I did as he was a perfect stranger there. He told me he had got two pounds from the man to go and do it. He did not offer me any money. . . He said he would give me one pound if I would go with him, or if he got three pounds he would give me two pounds. I did not go. I told him to go away and not ask me such things, but I would like to see the man that asked him to do it.

Beard was not to be drawn into a " Burke and Hare " partnership in body-snatching, and refused to have anything whatever to do with the project.

" Mr. Watt's " movements in the Wairarapa district were traced from week to week ; but he was not found anywhere between December 14th and 22nd, the dates when the mysterious stranger in the blue goggles and red wig was haunting Christchurch, Sumner, and Taylor's Mistake.

In the meantime the police in Christchurch had arrested first the two Godfrey brothers, and then, a week later, Mrs. Howard. They were charged with conspiring to defraud the insurance companies. They were remanded from week to week till some time in the month of January in the following year. Meanwhile Howard was arrested at Petone, a suburb of Wellington, on January 4th.

It is not necessary to explain what the reader has long since inferred, that Howard, " Watt," and the mysterious stranger in blue goggles were one and the same person. It is somewhat strange that he should have evaded detection so long. He had lost

the thumb of the right hand and a toe of the left foot. He was in other respects a man easy to describe and identify, and the insurance companies were offering handsome rewards for his apprehension. He had on several occasions between December 14th and 22nd walked through the main streets of Christchurch, passed a number of police officers while wearing what must have appeared to the least intelligent an obvious disguise. In Wellington he had actually been taken in charge by the police and brought in custody to the central station on the complaint of a woman who said he had insulted her in the street, but when she refused to proceed with the prosecution he was allowed to go free. And yet pasted on the wall of the police office he read a printed description of himself, together with an offer of a reward for his apprehension !

When arrested he had in his possession quite an interesting assortment of disguises and material for " make-up " ; gloves with false thumb for the right hand, several wigs and false moustaches ; a " make-up " box with brushes, dyes, and pink paste, several pairs of goggles, and no less than seven different coats.

All four prisoners were tried at the Supreme Court in Christchurch on April 8th, 9th, and 10th. Mr. Justice Johnson presided. Howard was defended by Mr. T. I. Joynt, a brilliant Irish advocate, then at the zenith of his powers. Mrs. Howard had for Counsel Mr. T. W. Stringer, who was then at the beginning of what proved to be a distinguished career at the Bar. Mr. Holmes defended the Godfreys. They were jointly charged with conspiring to defraud the insurance companies, and on

a second count with attempting to obtain money by fraud. The question of the validity of the marriage of Howard and his wife became one of great importance. If the marriage was a valid one, then the charge of conspiracy failed, so far as the woman was concerned, because husband and wife cannot conspire. Moreover, if the marriage was valid, the female accused had the advantage of the presumption of acting under compulsion of the husband.

The Crown therefore attacked the marriage. The police were able to produce as witness the man who had been first mate on board the Scotch sailing-vessel, the *Janet Court*, on which they had come out to New Zealand together, Howard as passenger-steward, Mrs. Howard as a passenger. The mate deposed that they were married when the ship was some weeks out to sea. It took place in the saloon, and the skipper performed the rite. The mate remembered each party answering "I will" to the usual question, but could not remember anything about a ring or the signing of any book. The marriage would no doubt have been perfectly valid according to Scottish law, but the ship, though on the Scottish register, was of course outside Scottish territorial waters when the contract was entered into. Mr. Stringer argued forcibly for the validity of the marriage, and concluded with a sentence which, perhaps because of its rhythmical sonority, has lingered in at least one memory for over forty years. "This man and this woman were as validly wed by the captain of that ship as though they had been married by the Archbishop of Canterbury with all the pomp and circumstance of a cathedral ceremony." The Court ruled that

the marriage was no marriage, and the trial proceeded on that footing. But as the parties had lived together as man and wife, had two children, and clearly believed themselves to be validly married, the jury probably determined to treat them by their verdict as though it were a valid marriage, in spite of the Judge's ruling to the contrary.

The case against Mrs. Howard appeared to be a strong one. She had, for example, at no time made any reference to her husband's ring until a few days before the hand was discovered. She then expressed a hope that there might be found either the left hand with a ring on one finger, or the right hand with the thumb off. The evidence, however, did not connect her so clearly with her husband's fraud before the alleged drowning as with complicity in the subsequent attempts to prove death by the production of the mysterious hand. Nor was there any evidence that the Godfreys participated in the original conspiracy. Such evidence as was produced against them, based largely on inconsistent statements to the police, implicated them either in a good-natured attempt to enable the widow to get the insurance money or in some effort to secure the reward for themselves. It seemed a reasonable inference that they had more than a suspicion as to the identity of the mysterious stranger in goggles, but the jury evidently came to the conclusion that the circumstances amounted to suspicion only. They returned to Court therefore with a verdict of "Not Guilty" as regards the Godfreys. They found Howard guilty on the first count for conspiracy. When the Judge

pointed out that this was an impossible verdict, inasmuch as Howard could not conspire with himself, the jury retired again and returned with a verdict of " Guilty " against Mr. and Mrs. Howard on the second count of attempting to defraud, and " Not Guilty " against the two Godfreys. But the Judge pointed out that this verdict also was inconsistent. For, if the jury found that Mrs. Howard was not aware that Howard was alive till December 15th, how could she know that he was dead on October 29th and December 4th, the dates on which she made application to the insurance companies for the money ? The Judge also said he could not see how Howard could be guilty on the second count unless they believed Mrs. Howard was acting for him in obtaining the money. The jury deliberated again, and finally returned a verdict of " Guilty " against Howard on the second count; the other three prisoners they found " Not Guilty."

As the law then stood the maximum sentence which could be passed upon Howard on this verdict was two years' imprisonment without hard labour. This sentence accordingly the Judge did pass upon him, remarking as he did so with some emphasis, " I assure you, and I say so sincerely, that I regret I cannot give you more as your fraud has been a most impudent and daring one."

But whence came that severed hand ? That was a mystery at the trial, and after forty years it still remains a mystery. No less than seven recently buried bodies were exhumed in various parts of the Wairarapa district where Howard had been working at or about the time of their burial, but all were found to have both hands intact. Twenty years

after, when I commenced practice in Christchurch, the venerable Court usher showed me with impressive interest and solemnity the severed hand, preserved in a jar of spirits of wine. He evidently regarded it as the most treasured exhibit in his gruesome museum. On one occasion, in conversation with Mr. T. I. Joynt, he spoke to me of the mystery of the hand. "That still remains," said he, "and always will remain, a mystery. Howard, in fact, told me where he got the hand from, but that secret will die with me, for I am the only survivor now of the three persons who alone knew the answer to the riddle." Within a few months of that conversation Mr. Joynt too was dead.

Chapter XXII

TWO FAMOUS POISONING TRIALS

THOMAS HALL is much the most remarkable man in the criminal annals of the Colony ; it may even be said, without exaggeration, that he takes rank among the very greatest criminals of the nineteenth century.

In October 1886 he was convicted of attempting to murder his wife by poisoning her with antimony, and was sentenced to penal servitude for the term of his natural life. In January 1887 he was found guilty of murdering his father-in-law by means of the same poison and was sentenced to be hanged. The verdict, however, was set aside by the Court of Appeal on the ground of the wrongful admission of evidence, and so he was spared the gallows.

The murder of his father-in-law was earlier in time by some months than the attempt upon the life of his wife ; but it will be found more convenient to narrate the events in the order in which they were discovered rather than in the order in which they happened.

Both crimes were committed at Timaru, a seaport of South Canterbury, about half-way between Christchurch and Dunedin. But it was deemed advisable in each case to change the venue. The charge of attempting to poison his wife was tried

in Christchurch, that of murdering his father-in-law in Dunedin three months later.

The presiding Judge at the trial in Christchurch was Mr. Justice Johnson. The Attorney-General, Sir Robert Stout (afterwards Chief Justice of New Zealand and a member of the Privy Council), conducted the prosecution. With him were the Crown Prosecutors of Timaru and Christchurch, Mr. J. W. White and Mr. J. C. Martin. Mr. T. I. Joynt defended Hall, while Mr. James Hay, of Timaru, acted as Counsel for Margaret Graham Houston, who was indicted and tried at the same time as an accomplice in the crime.

I was present as a spectator during a great part of the proceedings. The case naturally aroused intense interest among the public; but for me it had a special interest, because a short time before I had spent some months in Timaru, had lodged quite close to Woodlands, the scene of the crime, and was personally acquainted with several of the principal witnesses. Moreover, my fellow-collegian, James Hay, was engaged in the case. But a few years ago he too had been a callow undergraduate, yet here he was Counsel in a *cause célèbre*, conducting the defence of Miss Houston with consummate skill and chivalrous enthusiasm to its ultimate termination in a verdict of acquittal and the complete vindication of her good name. At that time I hoped myself in a few years to join the legal profession and emulate his great example; in the meantime I must see for myself "how it was done."

The interest I felt in every detail of that trial as it proceeded was increased in after-years when I was at length admitted to the Bar and myself

engaged in criminal defence work. I had become the intimate friend of James Hay; I now entered into partnership with Mr. J. W. White. From them, and from my friend Mr. T. I. Joynt, I learned much more about the career of Thomas Hall and the incidents of the two trials than could be gathered even from the admirable verbatim reports which were published at the time.

At the beginning of the year 1885 Thomas Hall, to all outward seeming, was in a position which many men might envy. Well-connected and well-educated, he was also reputed well-to-do. A few years before he had resigned from the position of manager of one of the banks at Timaru, and had set up in business as a land, stock, and station agent. In his earlier life he had managed one of his father's sheep-stations and thus acquired valuable experience in farming and stock-dealing. His career in a bank had given him a useful training in accountancy. With these qualifications, his social connections and his family backing, he appears in a very short time to have established a flourishing business. In private life he was in the best social standing; popular at "routs" and balls, in great demand at concerts and parties; he danced and sang well, and was accounted an entertaining fellow; he was a member of the County Club, and rode to hounds on a good mount.

Early in the year he became engaged to marry Miss Kate Emily Cain, step-daughter of Henry Cain, a retired sea-captain. Miss Cain had some present means and considerable expectations in the future. Under one settlement she was life-tenant and in receipt of an income of £250 a year; she

was entitled in reversion to other property under the provisions of several wills and settlements. Marriage with her might, therefore, in a worldly sense, be accounted a good match. She appears, moreover, to have been an attractive girl and was obviously devoted to her betrothed.

The marriage took place on May 26th, 1885, and husband and wife went to reside at Kingsland, a village some four or five miles out of Timaru. On the death of her step-father in the following January, however, they came to live at Woodlands, a large house with a considerable area of land, garden, orchard, and fields, attached to it. This place was situated on the outskirts of Timaru and was a valuable property. It belonged to Mrs. Hall and her sister in equal shares.

On June 19th, 1886, Mrs. Hall gave birth to a son. At this time the household at Woodlands comprised Hall and his wife, a lady-help or companion, Miss Houston, a maternity nurse, a cook, a housemaid, and a gardener. Dr. Patrick McIntyre was the family physician.

Mrs. Hall had enjoyed normal health during the time she was with child, and her accouchement presented no unusual difficulties. On the fourth day after the birth of her baby, however, she became unexpectedly ill and developed symptoms that completely baffled the doctor. Intermittent retching and vomiting continued from June 23rd to August 15th. She suffered from intense itching all over the body, distressing thirst, involuntary movements of the shoulders and spasms in the calves of the legs. Lips and nostrils were constantly sore ; the tongue was furred over in patches, and a faint blue line

showed itself on the gums. She complained frequently of a feeling of tightness round the throat as if someone were strangling her, and there was extreme tenderness over the abdominal region. As week followed week she suffered from ever-increasing prostration.

Throughout these two months Hall appeared to be all that a kind and affectionate husband should be. He spent much time in the sick-room, spoke to his wife always in terms of tender solicitude and deep concern ; would sit for hours by her bedside caressing her hand, trying to soothe her pain, and speaking words of hope and comfort. More than once he suggested that other doctors should be called in. There were, in fact, three consultations, with three doctors present at each ; but all were baffled and at fault. Hall even suggested analysis of vomit and excretions, and himself took into town vessels given him by the nurse, and left them with the doctors for examination. They applied the usual tests for Bright's disease and diabetes, but went no further. The symptoms were not consistent with any known natural disease ; they were, on the contrary, the actual symptoms that follow upon the administration of either of two poisons—the mineral poison antimony or the vegetable poison colchicum. But the idea of attributing Mrs. Hall's symptoms to poison did not suggest itself to any of the medical men who saw her. The only people in the house who had opportunities of interfering with the patient's food were the maternity nurse, Mrs. Ellison, the lady-help, Miss Houston, and Hall. To suspect either of the two women was absurd ; to associate the idea of poisoning with the

devoted and tender-hearted husband was preposterous.

And yet on August 12th, when the last of the three consultations was held, the thought of poison did suddenly force itself upon two of the doctors present. They tested excretions on the 13th; they said not one word to each other of the appalling suspicion that had flashed into their minds, but decided, without discussion, upon their course of action. They sent specimens to Professor Black, of Dunedin, Professor of Chemistry in the University of Otago, and would await his report. In the meantime they ordered that no food of any kind should be given to the patient by the mouth; she must be nourished by injections of beef-tea and brandy. It would be quite impossible, they thought, to administer a mineral poison in the injections. But as the patient suffered so much from thirst, they permitted her to sip ice-water from a wine-glass to moisten her tongue and lips. This also they thought safe; the boldest would not dare to put poison in ice-water, as it would be detected immediately by the taste.

And so, thought they, the patient would be in no danger if they waited till Professor Black's report should arrive. If the expert's analysis confirmed their tests, they would know how to act.

But they had not counted on the devilish daring of the poisoner.

The new regimen was begun on Saturday, August 14th, and there was a slight improvement on that day. Hall told his friends that his wife was much better. He was at the meet of the South Canterbury Harriers in the afternoon. He evidently

came home to dine, for he gave the nurse some brandy in a bottle early that evening for use in the injections; but he was back at the club in the evening and played billiards till a late hour. He was in excellent spirits; his friends had not seen him in such good form for weeks. "No wonder, poor devil!" said one—"his wife is better at last!"

But that night Mrs. Hall was again desperately ill. Injections—including some of the brandy—had been administered in the evening, and she vomited till four o'clock next morning. After breakfast Hall gave her some ice-water from a cup, and she at once began retching and vomiting again. By one o'clock, when Dr. McIntyre came, he found her dreadfully prostrated—almost in a state of collapse. One more such day would surely be her last.

But there were no more such days. From then on her health improved with marvellous rapidity; in a few days retching and vomiting had entirely ceased, and in a very short time she had completely recovered. But the cause of her sudden restoration to health must have been a terrible shock to this unfortunate lady, for it was simply this: that on the evening of Sunday, August 15th, her husband was carried off to prison, and the long course of slow poisoning abruptly ceased.

It becomes necessary at this point to go back to an earlier period in the narrative. In order to understand fully the character and motives of this ruthless man, we must trace the development of his infamous purpose from its inception to its culmination.

In the earlier part of the previous year Hall's financial position had become hopelessly involved. How it came about that he was in such straits is not known, nor does it matter. To meet pressing demands for money by his banker and other creditors, he had defrauded his clients and embezzled funds entrusted to him for investment in the course of his business. He was faced with a deficit of five or six thousand pounds. To conceal these frauds he had resorted to forgery. Subsequent investigation brought to light seven or eight forgeries of promissory notes discounted at his bankers', and of mortgage securities which purported to support the notes. The first of the forgeries proved against him was done two months before the marriage; this was a promissory note for £800, and the total amount involved in the series ran into several thousands. The position was such that unless he could arrange further credits or raise a very large sum in cash, he was face to face with exposure and imprisonment.

Many years after the trial his Counsel, Mr. T. I. Joynt, told me of an incident in his association with Hall which, in the light of the facts proved at the trial, is of appalling significance. Early in 1885 Hall sent up to Mr. Joynt from Timaru a "Case for opinion of Counsel." The case was well drawn, but was obviously the work of a layman. Hall had good reason, no doubt, for not consulting a solicitor in his own town, who might have had embarrassing personal knowledge of the matters upon which advice was sought.

The "case" set out the relevant clauses of several deeds of settlement; the names of parties

were not given, and Hall referred to the circumstances as "hypothetical." Counsel was asked to advise what would be the position in certain eventualities of a lady, the life tenant, and of any husband she might marry. What were her rights in the event of the death of certain persons having prior interests, and what benefits, if any, would accrue to her husband on her death before or after the birth of a child or children? Mr. Joynt delivered his opinion and gave no further thought to the matter.

But when, nearly two years later, he was retained as Counsel in Hall's defence, he at once realised that if the accused were guilty of the crime charged against him, then he had clearly contemplated the murder of his wife before he married her—perhaps even before he committed himself to a formal engagement. He realised also why the administration of antimony was not begun by Hall till some days after the birth of the child, for if Mrs. Hall died without leaving a child, the income of £250 a year which she received under one of the settlements would pass to strangers. If, however, a child were born, the income would pass to that child and be payable to the father as guardian during the period of minority. It is this fact, that Hall deliberately selected this young girl to become his wife, to bear him a child, and then to be murdered, that justifies the description of him as one of the greatest criminals of a century prolific in great criminals.

Two months after his marriage—on July 29th, 1885—Hall procured his wife to make a will leaving all her property to him. This will remained in his custody till his arrest. But he must have realised

that all the property his wife was able to leave him would fall far short of the amount necessary to cover up his defalcations. A few months after his marriage, therefore, he insured her life under two policies of £3,000 each. The premiums amounted to £120 a year, and fell to be renewed on August 28th, 1886. It was proved at the trial that Hall would benefit by his wife's death to the extent of about £9,000.

We have no means of knowing at what period Hall decided upon antimony as the poison for his purpose; but he had been a student of the properties and effects of that substance for several years. On May 19th—a week before his wedding-day—he borrowed from a bookseller in Timaru a copy of Headland's "Action of Medicines." He said he wanted some information about antimony, as he was suffering from sciatica. A few weeks later he purchased from the same bookseller a copy of "Taylor on Poisons." Contrary to his usual practice, he paid cash for the book, remarking as he did so, "You had better not book this." He was, however, three shillings short of the price, but was careful to send this amount to the shop by an office-boy the same day. It would seem that he was particularly anxious that the bookseller's ledger should contain no entry of his purchase of "Taylor." There was some evidence of falsification in regard to this incident. The bookseller swore that Hall, when he had bought the book, placed it on the counter and wrote some words in pencil in the front and also some at the back. He professed to be quite certain that the book produced in Court, which had been found in Hall's bedroom after his

arrest, was the very copy of " Taylor " sold by him at Timaru in 1885. Yet in front was pencilled in Hall's writing, " T. Hall, 1882 " and at the back, " T. Hall, Dunedin, 1882." At the trial in Christchurch the bookseller's story stood uncontradicted and may well have made a strong impression on the jury. But at the subsequent trial in Dunedin two dependable witnesses swore they had seen a " Taylor " in Hall's possession as early as 1883 and 1884. The bookseller may therefore have been mistaken as to the identity of the book produced and the book sold by him, or he may have been lying. His demeanour in the witness-box at both trials was equally consistent with his being a liar or a buffoon. Possibly he was both ; but fortunately it is not at all likely that any miscarriage of justice resulted from his testimony.

It was proved that on different dates during the months of June, July, and August 1886—the period when his wife exhibited symptoms of poisoning—Hall had made purchases of antimony and colchicum from three different chemists in the town. The antimony was usually in the form of tartar emetic—eight drachms of this were bought in the course of the three months ; but there were also purchases of a preparation called " antimonial wine." To one chemist he explained that he required the antimony to make cigarettes for asthma ; he had a recipe, so he said, for making these to contain antimony and stramonium seeds. In explanation of his purchase of colchicum he said he wanted it as an appetiser.

Having established the motive for the crime and the possession of means to accomplish it, the

prosecution proceeded to prove the administration of the poison.

The patient's meals were usually brought into the bedroom from the dining-room. Both Hall and Miss Houston, who took their own meals there, would have ample opportunity to poison the food. Hall usually took the breakfast-tray into his wife's bedroom, and remained with her while she ate it. But Miss Houston also prepared and took in to her many of her meals.

The vomiting continued, it will be remembered, from June 23rd to August 15th, with occasional intermissions of two or three days at most. But as neither nurse nor doctors suspected foul play, there was no evidence available to connect any particular fit of vomiting with any particular food. The only time when a clear casual connection could be established between a definite food or drink and a particular attack of vomiting was within the last twenty-four hours before the arrest; but that was enough.

The doctors thought their patient would be safe if she were limited to injections and ice-water. But Hall put colchicum into the brandy for the injections, and tartar emetic in solution into the ice-water.

On the evening of Saturday, the 14th, Hall gave the nurse a bottle of brandy, one-third full, and told her to use it for the injections ordered by the doctors. This was found to contain large quantities of colchicine—the active principle of colchicum.

On the Sunday morning the nurse prepared fresh ice-water for her patient. She saw to it that the jug was absolutely clean. She tied over it a piece of new muslin, and into this she put the ice—

carefully washed. After breakfast, Hall was alone with his wife for the best part of half an hour. When he had gone and the nurse returned to the room, her patient complained that the ice-water her husband had given her to drink from a cup was "nasty" and tasted bitter. "Goodness knows what was in it," said Mrs. Hall. The nurse sipped a teaspoonful of the water in the cup; she too found it bitter, and it made her vomit. She contrived, without being observed, however, to pour some of the water out of the cup into a bottle she had ready to receive it. It was ultimately ascertained that while the water in the ice-jug contained nothing foreign or deleterious, that drawn from the cup contained salts of antimony or "tartar emetic." In pouring the tartar emetic in solution out of a phial into the cup with his wife in the room, Hall had not been able to check the amount or measure the dose; the water in the cup was, in fact, found to contain eight grains of tartar emetic to the fluid ounce. The medical witnesses were of opinion that this blunder in giving an overdose was the only thing that saved the patient's life, for it made her vomit so violently during the day that she ejected the poison from her system.

When Dr. McIntyre saw the condition of his patient on the Sunday afternoon, and when he ascertained that poison had been administered in the ice-water, he realised that he must act at once. He dared not risk waiting for Professor Black's report, but must act on his own initiative. He at once placed himself in communication with the police, and at six o'clock that evening took the grave responsibility of himself swearing an informa-

tion against Thomas Hall and Margaret Graham Houston charging them with attempting to murder Kate Emily Hall by " a certain deadly poison called antimony."

In joining Miss Houston in the charge he committed a grave mistake which caused that unfortunate lady great and irremediable suffering ; but in the circumstances in which he was placed it is impossible to blame him, although it appeared in the course of the subsequent trial that the suspicions which pointed to her complicity in the crime were entirely groundless.

Hall's crime had been planned with diabolical subtlety ; and for months together he had played the part of the loving and devoted husband with such consummate hypocrisy as to divert all suspicion from himself. But in the end he blundered—as novices in crime invariably do. The one thing he had never taken into account or prepared himself to meet was the possibility of sudden arrest.

At half-past eight on Sunday evening a police inspector, accompanied by a detective officer and two constables, presented himself at Woodlands. Miss Houston opened the door and admitted them into the dining-room where Hall was. They were not left long in doubt as to the motive of the visit :

" I arrest you both on a charge of attempting to poison Mrs. Hall by administering antimony."

Hall stood speechless. Miss Houston was the first to break the silence.

" Oh—antimony ; isn't that what you got for your photography ? "

" Yes," said Hall, grasping at any possible explanation ; and then, moved, one may hope, by

a chivalrous impulse—for he had, after all, been a gentleman—he added : " *You* have nothing to do with this." Then, after a pause, he pulled himself together and said :

" I've used antimony a long time ; I've got it to make up into cigarettes with other things for my asthma. You know I suffer from asthma. I have bought tartar emetic at both Gunn's and Eichbaum's " (naming two of the chemists), " but whatever I have done in this matter I have done by myself. There is nobody else concerned."

As he spoke he was backing towards the fireplace and his hands crept towards his pockets. He had suddenly remembered that he carried the poison on his person in a form in which it could not possibly be used for making cigarettes. The Inspector sternly commanded him to take his hands out, and was proceeding to search him when he appeared as though about to collapse and asked to be given some brandy. The detective left the room to fetch the brandy : the moment Hall found himself alone with the Inspector his strength suddenly revived, and he plunged both hands into his pockets. The Inspector closed with him ; Miss Houston, acting on a very natural impulse, threw herself between them. In the struggle Hall managed to remove the cork from a phial in his pocket, and as it fell on the floor he tried to kick it into the fireplace. The phial was found empty, but the pocket was wet—as it proved, with tartar emetic in solution. In the other pocket was an envelope which Hall had managed in the struggle to tear open ; this contained tartar emetic in the form of powder.

The suddenness and surprise of the arrest had

completely unnerved him; he had not even recovered his senses by the time he reached the police-cells, for there he made the most damning admission of all. In the hearing of a police-sergeant he said to Miss Houston, "You are quite free and will be able to get clear. I cannot possibly hope to get off."

Even in that desperate moment his words would seem to have been actuated by a generous impulse to comfort the innocent girl arrested for complicity in his crime. Let this be accounted to the credit of a man of whom so little that is good can ever be spoken.

The case against Miss Houston proved to be of the flimsiest description. She had, of course, had ample opportunity to administer poison to Mrs. Hall, for she had herself prepared and taken in to her many of her meals. But beyond this there was nothing, except the malicious statements of two servant-girls who deposed to "familiarities" between her and the male accused. Under cross-examination both these women betrayed the strongest personal animus against her—the animus of the servant-girl against the "lady-help." The Judge, as well as the jury, clearly regarded the evidence of both these women as utterly unworthy of belief.

The trial lasted eight days, but the jury took less than that number of minutes to arrive at their verdict. They found Hall "Guilty" and Miss Houston "Not Guilty," and they added to their verdict their unanimous opinion that "Margaret Graham Houston leaves this Court without a stain or blemish on her character."

When Dr. McIntyre realised that the mysterious symptoms which Mrs. Hall had exhibited were due to antimony administered by her husband, it set him thinking. Those were the very symptoms, as he now remembered, from which another of his patients had suffered but a few months before—Mrs. Hall's step-father, Captain Cain. He, too, for several weeks vomited. The doctor now recalled how he had complained that his grog made him sick—he, an old sea-dog, who had taken whisky every day of his life for fifty years, and liked it. When they changed his liquor and gave him port and then champagne, he still vomited. Even the cough-mixture that had been prescribed for him made him, quite unaccountably, sick. Hall, he knew, had been a daily visitor to the patient's bedside. It is true the Captain was an old man and suffered from dropsy and kidney disease; he had himself given his certificate at the time alleging this to be the cause of death. But was it? And if it was—had death from this cause been accelerated by another? When he reviewed all the circumstances, as he knew them, the doctor felt that here was a matter that called aloud for investigation. So he set the authorities to work.

The necessary formalities having been complied with, the body of Captain Cain was exhumed on September 27th—a fortnight before the trial at Christchurch began. It was thought advisable to carry out the exhumation in the evening, the later the better, to avoid the presence of the morbidly inquisitive.

It was a gruesome and macabre scene. The night was pitch-dark; rain fell in torrents; a

strong gale blew from the south. The flambeaux and torches used to light the grave-diggers at their work spluttered and flared in the storm and were with difficulty kept from going out. Huddled together, with their backs to the wind and the driving rain, stood the officials—the sexton and undertaker, to identify the coffin ; Inspector Broham and subordinate officers of police ; Dr. Ogston, the pathologist from the Otago University, and Dr. Hogg, of Timaru, who was to assist him in the post-mortem. Mr. White represented the Crown Law Office, and Mr. Perry, the accused Hall.

The coffin was removed to the Timaru Hospital, where the post-mortem examination was begun that night and finished by one o'clock in the morning. Although the body had been buried for nearly eight months, identification presented no difficulty. Portion of the stomach, liver, kidneys, and intestines, together with fluids drawn from several parts of the body, were taken next day to Dunedin and there analysed by Professor Black. Traces of antimony were found in all the specimens. Only a rough quantitative analysis could be made, but it yielded two grains of antimony in the matter sent for analysis. The inference was irresistible that this represented much larger quantities administered during life ; but even the quantity actually found would have been enough to accelerate death in a person in the condition of health of the deceased.

The trial took place in Dunedin on January 24th, 1887, and seven following days. The presiding Judge was Mr. Justice Williams (afterwards Sir Joshua Strange Williams, a member of the Privy Council). Mr. B. C. Haggitt, Crown Prosecutor at

Dunedin, and Mr. J. W. White, Crown Prosecutor at Timaru, appeared for the Crown ; Mr. Chapman (now Sir Frederick Chapman) and Mr. Denniston (afterwards Sir John Denniston), both subsequently raised to the Judicial Bench, acted as Counsel for Hall.

It appeared that Captain Cain had been opposed to the marriage of his step-daughter to Hall, and had in fact absented himself from Timaru to avoid being present at the wedding. After some months, however, a reconciliation was brought about. Hall began to visit Woodlands, where Cain resided ; the breach between them was gradually healed, and from the middle of December 1886 Hall became a daily visitor. He would call sometimes at ten in the morning on his way in to Timaru. At this time, it will be remembered, he and his wife resided at Kingsland, five miles out of town. He was almost invariably at Woodlands for lunch ; and he frequently called again on his way home to dinner. On several occasions in January he sat up part of the night with the sick man ; and he was actually in the house when Cain died in the forenoon of January 29th. If others were present in the room when he called, he would ask them to retire on the ground that he had " private business " with the Captain.

The evidence of motive for the crime was somewhat obscure. The financial gain that actually accrued to him, through his wife, was not, it would seem, enough to found a motive for murder, even to a man in Hall's embarrassed financial position. But he may well have over-estimated the Captain's means and been disappointed at the result.

It was clear that he had ample opportunity for administering poison. The patient's cough-mixture stood on a table in the room concealed behind a screen ; Hall frequently gave him the mixture, and it invariably made him vomit. Hall would also occasionally give him his whisky, and later, when the drink was changed, his port or champagne. Two other persons were proved to have been sick after tasting the Captain's whisky. On the other hand, when a fresh bottle of champagne was opened on an occasion when Hall was not present, Cain drank of it without any unpleasant effects. He was never sick after breakfast ; but nearly always after lunch or dinner, when Hall called. Neither his food nor his tea, given to him by the women of the household, ever made him vomit.

The cross-examination was chiefly directed to showing that Captain Cain died of kidney disease, and that the evidence did not establish that the antimony found in his remains had contributed to his death. On the other hand, although Cain had been ill many months, it was not till Hall's daily visits began in the middle of December that the vomiting symptoms showed themselves. And during the five or six weeks between the beginning of the visits and the death of Cain, Hall was proved to have made purchases of tartar emetic from the chemist at Timaru.

The Case for the Crown, so far as the direct evidence went, was not strong. But the Judge ruled that evidence was admissible to prove that another person, namely, his wife, to whom the prisoner had access, had exhibited the same symptoms as Cain exhibited, and to show that in the

excreta of such person the same substance was found as in Cain's body. This ruling let in evidence of Mrs. Hall's symptoms; of the antimony in her vomit, of Hall's access to her, his conduct on the occasion of his arrest, and the fact that antimony, both in solution and in the form of powder, was then found on his person. The question of the admissibility of the evidence was reserved for the Court of Appeal; but subject to this reservation the jury were directed that they might consider this evidence for all purposes and attach such weight to it as they thought proper.

Once this evidence was admitted, the verdict could scarcely be in doubt. The jury, after a retirement of an hour and a half, came back with a verdict of "Guilty." Sentence of death was there and then passed upon the prisoner, but the execution was respited until the question reserved should have been dealt with.

In the "case sent forward to the Court of Appeal" the learned Judge stated that he had admitted the evidence on the authority of "*Regina* v. *Geering*" [1] and the series of cases in which that decision had been followed in England; but he pointed out that "*Regina* v. *Winslow*" [2] was in conflict with these decisions; that in *Palmer's* case, where evidence of this kind was almost certainly in existence, and where the case for the Crown would have been enormously strengthened by its admission, such evidence was not tendered; and, finally, that the question had never come before the Court of Crown Cases Reserved. These facts seemed to him, in the absence of any right of appeal by the prisoner,

[1] 18 L. J., M.C., 215. [2] 8 Cox C .C., 397.

to justify him in reserving the matter for the Court of Appeal. "In summing up," said the learned Judge, "I directed the jury that they ought to draw any inference from this evidence as to the administration of antimony by the prisoner to Cain that they considered reasonable. The admission of the above evidence was, in my opinion, essential to establish the administration of antimony by the prisoner. Had it not been admitted, I should probably have told the jury that there was no evidence against the prisoner upon which they could safely act."

The Judges who constituted the Court of Appeal were unanimous in holding that, as there was not sufficient proof that the two poisonings formed part of the same transaction or were effected in pursuance of a common design, the conviction must be quashed. As Mr. Justice Williams was himself a member of the Court of Appeal and sat on the case, it must be assumed he concurred in the decision.

In the course of its judgment the Court of Appeal said :

VIEWED in the light of science, philosophy, or common sense, there is without doubt a *nexus* between the two events. The all but mortal illness of Mrs. Hall having been traced to antimony administered by the prisoner in small doses, and the death of Captain Cain having also been traced to the same physical cause, it is, having regard to the other circumstances, reasonable to infer that the human agency in both cases was the same. The strong general resemblance between the two occurrences is, no doubt, cogent evidence to the general mind. But such a resemblance standing alone, without other connecting circumstances, is

not allowed by the law of England to be relevant proof of guilt.[1]

Law should be the perfection of common sense, and it usually is. The prisoner Hall, therefore, must be regarded as singularly fortunate in that on this question of admissibility of evidence the New Zealand Court of Appeal found itself compelled to hold that facts sufficient to satisfy science, philosophy, and common sense were yet insufficient to satisfy the law of evidence.

The judgment in "*Regina* v. *Hall*" was adversely commented upon by two of the three Judges in New South Wales who, on a Crown Case Reserved, upheld the conviction of Makin, the "baby-farmer," where a similar question of admissibility arose.[2] As this decision was affirmed in the Privy Council,[3] some doubt is thrown upon the correctness of the view taken by our Court of Appeal, though *Regina* v. *Hall* is not specifically referred to in the opinion of their Lordships as delivered by the Lord Chancellor.

But all doubt on the matter so far as this country is concerned, was set at rest by the Legislature soon after the decision of the Privy Council in "*Makin's Case*." Section 16 of our "Evidence Amendment Act, 1895" makes evidence of the class held to have been wrongly admitted in *Regina* v. *Hall* admissible for all purposes in cases of poisoning.

After he had spent twenty-one years in prison

[1] 5 N.Z.L.R., C.A., 93 at 108. This case is discussed in *Law Quarterly Review*, January 1888, p. 71.

[2] 14 N.S.W.L.R., 1893, 1.

[3] 1894, A.C. 57.

the Executive decided to release Hall. He had, it is said, completely recovered from his old complaints, asthma and sciatica, and was for a man of his years in remarkably good health. He passed the remainder of his life somewhere in Australia, in receipt of an allowance of £100 a year. But he fell back on an old hobby to supplement his small income ; he became an itinerant photographer, and used to photograph suburban " bungalows "—there are no longer " cottages " in the Colonies—and sell the prints to the proud proprietors at a shilling a-piece. But it is not recorded that he used antimony to develop his plates.

When I joined Mr. J. W. White in his practice at Timaru in 1905 he and I were going through his law-books to value them for partnership purposes. On a top shelf, out of sight, we came upon a " Taylor on Poisons," covered with the dust of nearly twenty years. It was *the* " Taylor "—the very copy produced in Court at the two trials. Mr. White, regarding it perhaps as a deodand, had very naturally appropriated it after the Dunedin trial, but had never had occasion to use it during the eighteen years it had been in his possession. Taking the book between his palms and resting it, back downwards, on the office table, he said, " I wonder if it still does it ! " and then let go his hands. Sure enough it still did : it fell open at page 371—at the article " Antimony."

Chapter XXIII

MY APPOINTMENT TO A JUDGESHIP

ON January 28th, 1925, which happened to be my fifty-eighth birthday, I received a letter from a member of the Judicial Bench inquiring whether, in the event of a vacancy occurring, he might mention my name to the Attorney-General, in whose hands lies the initiative of appointment to the Bench in New Zealand, as that of a member of the Bar who would, if invited to do so, accept a Judgeship. The suggestion came as a complete surprise to me, because, as I was thirty-eight years of age when admitted to the Bar, and had therefore had only a very limited experience in the legal profession, it had never occurred to me that I was ever likely to be deemed qualified for such a position. Nor did it now occur to me. I interpreted the letter as merely the kind thought inspired in the mind of a too generous friend by some recent work of mine in the Court of Appeal.

The answer to that letter naturally involved my wife and myself in much thought. I had lived for forty years in Christchurch. We had a beautiful riverside home there to which we were much attached, and our children were all placed in good schools.

The acceptance of a Judgeship meant uprooting

ourselves from Christchurch with all its happy associations, and establishing ourselves in a city where we were practically strangers, and where a home such as we had been able to afford in Christchurch would be quite beyond the emoluments that are enjoyed by a Judge in New Zealand. In a small community such as this, where the work of the higher Courts is distributed among four small cities, it is not found practicable nor desirable that a barrister, when appointed to the Bench, should for the first few years at any rate preside over the Court in which he has been practising. Hence appointment usually entails a change of home ; in my case, a change to Wellington.

I had been for fifteen years a member of the firm of Garrick & Company, established in the early sixties, and one of the three oldest firms in Christchurch. Several changes had taken place in the constitution of the firm, and by 1925 the business belonged to my partner, Mr. F. I. Cowlishaw, and myself. A great part of my capital consisted of my share in the goodwill of this business. The acceptance of a Judgeship entailed the giving away of this, because, according to the high traditions of the British Judiciary, a barrister, or, in this country, a barrister and solicitor, does not on appointment sell his goodwill.

But in spite of these sacrifices which must necessarily be made, I had no hesitation in the matter. I felt that questions of finance and economic considerations were not matters that should be taken into account. My qualification and fitness for the office of a Judge should alone weigh with me. So I replied that if I were indeed thought competent

and experienced enough to fill the position, and if the Government were to offer it to me, I would, in my own phrase, "follow my star." A few days later, on the resignation of Mr. Justice Hosking on account of ill-health, I was offered and accepted the vacancy.

There was a strange coincidence associated with my appointment of which I am very proud. The Consul-General for Denmark in Australasia, Herr Ove Lunn, had recently visited New Zealand, and induced me to accept the position of Honorary Consul for Denmark with jurisdiction over the South Island. I felt that a Consul should have commercial rather than professional training, but I was after all the leading representative of my country in the Dominion, I had never lost touch with my native land, and I still spoke and wrote my mother-tongue. I felt, therefore, that I might be of some service to my country and formally applied for the vacant consulate.

On the afternoon of February 4th I received a letter from the Minister of Foreign Affairs at Copenhagen, notifying me of my appointment. On the morning of February 5th came the letter from the Attorney-General of New Zealand offering me a Judgeship. So that within twenty-four hours I was appointed to a post of honour by the Government of my native land as one of His Danish Majesty's Consuls, and by the Government of the land of my adoption as one of His Britannic Majesty's Judges.

On my acceptance of the Judgeship I cabled my resignation of the consulate which I had held for exactly eighteen hours. I remembered at once that

there was a parallel for this brief consulate in the history of Rome, and that there was an amusing allusion to it somewhere in Cicero. In my letter to the Minister for Foreign Affairs confirming my cable I alluded to the incident in the history of Rome, and begged him to convey to His Majesty King Christian X my respectful assurance that " during my tenure of office as Consul I had made no mistakes," though I was unable to say, with the Roman Consul, that I had never slumbered during my term.

It is only quite recently that I have been able to trace the allusion and verify my recollection of Cicero's joke which I read forty years ago. The Consul's name I find was Caninius ; Cæsar appointed him some time after noon of December 31st to hold office till the end of the year, that is, until midnight. This is the reference in Cicero :

ITA Caninio consule scito neminem prandisse. Nihil eo consule mali factum est ; fuit enim mirifica vigilantia qui suo toto consulatu somnum non vidit. (Ad. Fam. 7. 30.)

It is odd that I should have forgotten the best part of Cicero's joke—*neminem prandisse* !

There was another *locus classicus* recalled by my appointment, not to me, but to Sir Francis Bell, the Attorney-General, who drew my attention to it. It happened that on the evening of the day on which my appointment was announced in the newspapers, my wife and I attended the theatre to witness a performance by Seymour Hicks and his Comedy Company. The orchestra was still playing the overture, when, no doubt to the annoyance of the conductor, and to the very acute embarrassment of

my wife and myself, the whole audience burst into a round of applause. It began, I need not say, among the ever-benevolent "gods," but quickly spread through the whole theatre and was unmistakable both in its warmth and its significance. I was very proud of and touched by this generous tribute from my fellow-townsmen, among whom I had lived and worked for forty years, and I must admit that I was very glad that the lights in the auditorium, for the moment, were low. When Sir Francis saw an allusion to the incident in the Wellington papers, he wrote and drew my attention to Odes 1. 20, where Horace invites Mæcenas to visit his Sabine farm, and to drink of his Sabine wine, humble in quality, but bottled by the poet himself, and carrying in its date a pleasant reminiscence of an incident in the life of his patron :

datus in theatro
Cum tibi plausus.

If this reception by my fellow-townsmen was gratifying, equally so was the fact that I had what actors call "a good Press." This again, however, I owed to the generosity of my friends rather than to their considered judgment. It was not *vox populi* that spoke through the columns of the newspapers, nor was it *vox Dei*. It was, to be candid, *vox ludi*, the voice of the school. All the city newspapers, in their editorial columns, commented favourably on my appointment, but then no less than four of these, besides three others at that date were edited by "old boys," with all the bias of old boys in favour of the school where they were taught, and of the masters who had taught them.

I don't know who was the leader-writer responsible for the comment upon my appointment in the Auckland *Herald*. But he *must* have been an old boy, with memories dating back to the Lower Third at least. For he compared me with Joseph Conrad, in that he too wrote in a medium that was not his mother-tongue. " Like the novelist," said this too indulgent critic, " the new Judge has attained recognition as an accomplished and forceful writer of a language not his own." The leader did, however, point out that Conrad had reached manhood before he learned a word of English, while I had made a beginning before I was ten. And if the critical reader of these pages finds little justification in them either for the " accomplished " or the " forceful " of the eulogy, I would beg him remember that here, *nescio quid meditans nugarum*, I have relaxed, and that much of this book has been written in dressing-gown and slippers, most of it dictated from a sick-bed in pyjamas. If the reader be interested in discovering my style at its best, I must respectfully refer him to the New Zealand Law Reports : to my learned dissertations therein on such fascinating topics as trade marks, to the unravelling and the pellucid exposition of Maori land tenure " plots," and even to luminous analysis of obscure clauses in the Rating Act—promptly reversed, it is true, by my brethren in the Court of Appeal—with their usual vigour, but not, I hope, on the ground of shortcomings of style.

Once more, on entering upon a new profession, my fourth, and my last, I had an attack of stage fright. The gaps that existed in my legal knowledge became chasms that positively yawned before

my frightened vision. But I soon learned that writing judgments was much easier than writing opinions had been, because in forming your judgment on the Bench you have the aid of competent Counsel who put both sides clearly and exhaustively before you, while in forming opinions at the Bar you have either no help at all, or the help of a young, eager, and enthusiastic "devil" always disposed from obvious motives to persuade you to the opinion which he knows your client desires you to arrive at. I had not been long upon the Bench before I realised the truth of Lord Wensleydale's observation, and found how much pleasanter it is to spend your life seeking for the truth than to pass your days searching for an argument.

It will probably surprise most lay readers to be told that the work of a Judge, whatever it may be in reality, certainly seems to be much less responsible than the work of a barrister with a large Court practice. The unsuccessful litigant cannot blame the Judge for the loss of his case. He visits his disappointment and sometimes his anger too upon the Counsel who advised him to bring or to defend the action.

One of the difficulties that must often give pause to an advocate when he is invited to become a Judge was resolved in my own case by the recollection of a personal experience when I was a journalist. How shall an advocate, who has been all his days at the Bar a fierce fighter, the type of man who because of his very temperament must persuade himself first before he can persuade Judge or jury, and who identifies himself in interest with the cause of his client of the moment, how shall such a man

when suddenly called to the Bench acquire the poise and balance and impartiality demanded of a Judge? One knows, as a matter of experience, that Judges do acquire it; for it is notorious that many of our best Judges have been our most strenuous advocates.

In my own case, however, I had no apprehensions on the point. I remembered that in 1900 I was invited with my friend Mr. R. F. Irvine, now Professor Irvine of Sydney University, to write a book for an American publishing house upon the history of New Zealand in the nineteenth century. It fell to me to write the second part of the book, from the initiation of the Public Works policy in 1870 to the entry of the Colony into the Boer War. That covered the period of "The New Democracy": the Seddon-Reeves Labour Laws, the MacKenzie Land legislation, the Ward State Advances, and other radical measures in finance. Throughout these years of fierce political controversy I had been leader-writer on the Conservative side, with standing instructions to attack and criticise all these measures and, if necessary, rough-handle the authors of them.

As was natural at that age (I was between twenty and thirty) I soon became the partisan I was instructed to be, and really believed that all the virtue the Colony contained at that date resided in the bosoms of opulent sheep-farmers and what we loved to call "Captains of Industry." When I accepted a commission to write that most difficult thing, a book of contemporary history, I had to purge my mind of all this Conservative bias, examine Reeves's Labour Laws, and MacKenzie's "bursting-up" legislation, and Ward's "frenzied finance," as

it had always been called in our leaders, and see for myself with the naked eye and not through smoked glasses what of merit these things possessed. The danger was that in my anxiety to be fair to the Radicals I might swing over and become unfair to the Conservatives. I fortunately escaped both Scylla and Charybdis, if one may judge by the reviews. The *Bookman* described my portion of the joint work as absolutely free from party *pris*. The *Westminster Gazette* and the *Scotsman* were equally generous in crediting me with having written an impartial book; while one of the Manchester dailies, I think the *Guardian*, in the course of a long review, said that but for an admission by me in a footnote it would be impossible to say on which side I had stood in the bitter controversy between the old Conservatives and the new Radicals during the ten years that these bold legislative experiments tore New Zealand political parties asunder, and drew the eyes of the world upon the distant little Colony. If after ten years of fierce partisanship as a journalist I could write what appears to have been generally accepted as an impartial review of contemporary history, then I thought I need be under no serious apprehension that my twenty years of advocacy would warp my judgment as a Judge.

But the question that gave me most concern in deciding how to answer that letter of invitation was the effect the appointment would have upon my enjoyment of life and my demeanour towards my fellows. All through life I had been a gregarious man, much dependent for my happiness upon my friendships. Conversation was my chief hobby,

though candid critics who refuse to allow me to quote them have been honest enough to tell me that I failed to grasp even the rudiments of conversation as an art, and that I was nothing more than "an irrepressible monologist." Must I now, as I had seen so many Judges do, hedge myself round with a dignity that with my temperament could sit but ill upon me? Must I guard my every utterance for fear it should be taken too seriously or misunderstood? Or could I, on the other hand, continue boldly, as I had done all my life, to seek my happiness in "the society of friends and the cheerful glass, and candle-light, and fireside conversations, and innocent vanities and jests and *irony itself*?" Might I still behave, and occasionally misbehave, as that beloved worldling "Elia" did?

Again I found the answer to my difficulty in the experience gained in an earlier profession. I remembered how little formal dignity I had about me when a schoolmaster, and yet how I had dominated boys and maintained discipline, and had won and held their respect and affection. I determined therefore to be very jealous of the dignity of my office and to let my personal dignity take care of itself. What had answered admirably in the rostrum I have so far found answer equally well on the Bench.

On this at least I was fully determined: the acceptance of my new position might entail many sacrifices; there was one I was not prepared to make. If I had thought my appointment would mean the severance of any one of the many friendships I had formed at the Bar, if I had thought it would temper the ardour of the least intimate of them, I should have hesitated to accept. On the

contrary, my experiences on circuit have given many opportunities of increasing my friendships, and of these I have taken the fullest advantage.

Of the gifts I have had reason to be grateful for during a very happy life, the greatest of all has been the God-sent gift of winning and retaining friends. Of this I have had during the last months of a long-drawn illness proofs that can never be forgotten by me or any member of my family.

My book, if it is published at all, will, I fear, be posthumous. But, as Noyes Westcott said of David Harum in his letter to Appleton's who finally accepted it, nothing can take away the pleasure it has been to write it. In my case that pleasure has been doubled by being shared. For from the first page to the last every word of it has been dictated to or revised by my wife.

And so

Vale!

APPENDIX

Appendix

A CELT AT THE ANTIPODES[1]

"THE whence of the Maori" is a fascinating riddle that continues to baffle the researches of the learned; and many are the theories constructed to solve the mystery. I hasten to explain that this paper is not an addition to the list of ingenious conjectures. I am not so daring as to attribute kinship with the ancient Irish nation to the swarthy aborigines of New Zealand. But readers of Maori poetry and legend must often have felt that there is a strong Celtic element in their imagination; and no one who has known them to live with them will call it merely fanciful to say that the Celtic vein runs also through their temperament and character.

The Maori is "of imagination all compact." His mood is ever changing from volatile mirth to pensive melancholy; he will be laughing his heart out one minute, and the

[1] Most of the legends and anecdotes in this paper were told me by Maoris; and my impressions of their temperament and character are the result of personal experiences in the remote "King Country" before the tourist-corruption had invaded it. But I am also under occasional indebtedness to Sir George Grey's "Polynesian Mythology"; to papers by the Rev. Wm. Colenso; and to the fascinating account of the Maori in the earlier part of Mr. W. P. Reeve's "Long White Cloud." The Ven Archdeacon Williams, author of the fifth edition of the "Maori Dictionary" (of which his grandfather produced the first and second, and his father the third and fourth editions), has kindly read and revised the article for me, and I am indebted to him for corrections and valuable suggestions.

next weeping copiously at a chance meeting with a long-absent friend; for the tears of a Maori are trained into perfect obedience to his inexorable laws of etiquette. Their instinct for the picturesque, their love of colour, their delight in oratory—all these are Celtic. The *tangi* they hold over the dead is but a "wake" at the Antipodes; the *taniwhas* with which their fancy peoples wood and lake and stream are but "banshees" in new guise; their irresistible "blarney" is pure Tipperary.

Enter a Maori village and live among them for a season, and you find them quaintly reminiscent of the Irish peasantry as you know them in the pages of Miss Barlow or Lady Wilde, of Yeats or Will Carleton. Their cheerful hospitality, their care-free gaiety, their reckless "happy-go-luckyism," make them perversely attractive. Incorrigibly improvident, it is either a feast or a famine with them—so far, at least, as money is concerned; for their staple food seldom runs short, as potato famines, happily, are here unknown.

Tribal communism and individual laziness combine to keep the larder bare; there are cows in every *kainga*; but it does not always occur to their communal owners to milk them. As frankly indifferent is their disregard of time. They are as provokingly unpunctual as a Dublin jarvey. They do not even know their age; ask a Maori how old he is, and you get the stereotyped answer: "Is a man like a horse that you can tell his age by his teeth?" If you bid them make haste, they reply imperturbably, with the word most often on their lips: "*Taihoa!*" ("By-and-by"). But one strong motive would break through their economic indifferentism: they clung to the land with the pathetic tenacity of a cottier. In these degenerate days, other desires have proved stronger than the primitive instinct; but formerly, the land was all in all. "The best death a man can die is for the land," so ran a Maori proverb. "Let us die for the land!" shouted a chieftain, haranguing his men before one of their first battles with the English. No war-trump could have stirred them more.

A fine chivalry marks the best side of Maori, as of Irish, character. Illustrations of this abound in the stories of their wars; the best, perhaps, the well-known incident recorded by Manning in "Old New Zealand." A Maori chief, who had fought against us in the Waikato War, on being asked why, when he had command of a certain road, he did not attack the ammunition and provision wagons, replied in astonishment, "Why, you fool, if we had stolen their powder and food, how could they have fought?" Chivalrous, too, is their ideal conception, if not invariably their actual treatment, of woman. In the Maori Genesis, "Her sire was a noon-day sunbeam, her mother, a sylvan echo." In their Hero and Leander legend, it is the maiden, Hinemoa, who is the swimmer. In their nursery tales, even "the man in the moon" is a woman!

Throughout their elaborate code of manners runs a delicate sensibility. You cannot converse for long with a Maori *rangatira* without knowing you are in the company of a gentleman. His grave dignity of manner is in odd contrast, at times, with the native simplicity of his costume; but if his clothes are grotesquely modern, his "family" is often very ancient. He does not claim to be "descended from a line of kings"; but he can give you an unimpeachable pedigree that traces his back, perhaps, to one of "the first canoes" from Hawaiki; for your Maori aristocrat, like your English, "came over with the Conqueror." And he is often ludicrously conscious of it: a Maori of rank would resent having his child spanked by a pedagogue whose blood was less blue than the offending urchin's; and the Native Education Department hesitates in consequence to employ Maori teachers in Maori schools, for fear of reviving tribal animosities! But *noblesse oblige*; and if Maori gentlefolk have arrogant pretensions, they have also elegant manners. Their conception of the laws of hospitality is the perfection of courtesy. I was once, with others, the guest in a remote "King Country" *pa* of a *rangatira* of the old school. He always gave us of the best, but,

according to native usage, had too much delicacy to watch us eat; when we retired for the night, he invariably sent his old wife to the *whare* where we lay in our blankets on the flax-mats, with instructions to "tuck us in"; and "tuck us in" she did, with all the solicitude of a mother for her child. It is a fixed canon of Maori breeding that you must avoid in converse words or topics likely to be disagreeable to a guest. Our host in this instance carried the rule so far as to refuse to differ from us even in religion. With, I fear, less regard for good manners than the Maori standard, I one day asked him to which of the half-dozen sects represented in the little village he himself adhered. He answered my question with another, "What you?"; and on my saying:

"Church of England."

"Kapai te Ingirihi," said he ("Very good, the Church of England"). "I—Ingirihi."

It happened that one of my friends asked him the same question and received the same guarded reply, "What you?"

"Pikopo," answered my friend—i.e. Roman Catholic, "episcopal."

"Kapai te Pikopo," was the bland response. "I—Pikopo."

On comparing notes, we thought this contradiction somewhat strange, and suggested to the third member of the party that he, too, should draw our host apart and make the same inquiry; and if asked his own sect, profess something fanciful. Sure enough he got the stereotyped response, "What you?"

"Salvation Army," said our friend.

"Kapai te Hawatene Hame" (the Maori transliteration of Salvation Army); "I belong Hawatene Hame"; and then, with great gusto, "Kapai te Big Drum!"

Had there been ten in the party instead of three, and all of different creeds, I have no doubt our complacent host would have been fully equal to the demand upon his good manners. But the enthusiasm with which he made the

addition " Kapai te Big Drum " left us in no doubt as to his real sectarian leanings.

But although my host on this occasion was a member of the Salvation Army, it is a strange fact that that organisation has failed signally to get a hold on the Maori. The " big drum " and wind instruments, to say nothing of the red jerseys, would, one would have thought, make an irresistible appeal.[1]

But it is the poetry of the Maori that best reveals the Celtic vein : that sensitive quality that makes them singers of songs and orators capable of playing at will upon the feelings of their countrymen. Their language, even the speech of daily life, is rich in imagery ; the very names they have given the features of their native land breathe a rude poetry : *Wai-ata-rua*, " Water of Twin Shadows " ; *Makotuku*, " The Stream of the White Crane " ; *Wai-orongo-mai*,[2] " Hear me, ye Waters ! " Metaphor is the basis of all language ; but the " poetry " of Maori is not yet become " fossil." His commonest phraseology is

[1] Since writing the above I have come across an anecdote delightfully characteristic. It occurs in an interesting series of articles on New Zealand, contributed to the Frankfort *Umschau* by Dr. Hundausen, a Swiss scientist who visited the colony many years ago : As he was travelling by train from *Wanganui* to Wellington, some " farmer ladies " allowed themselves to smile at his stockings, which, he admits, were probably quite different from anything they had seen before. " Suddenly I noticed a stately Maori lady who was sitting next to me gather her skirts together and throw the folds over my legs, saying defiantly as she did so, ' He is my brother ! ' " Dr. Hundausen thoroughly appreciated " this naïve expression of proper human sympathy, as opposed to the conduct of her civilised sisters."

[2] My friend Archdeacon Williams flatly refuses his approval to this poetical translation, and says : " Wai-orongo-mai " means nothing more than " The stream of Orongo." Lexicographers were ever iconoclasts. If I am compelled to accept his scientific etymology, I shall insist on spelling the name " O'Rongo."

imbued with the poetry of the woods. "I sit like the children of the forest bowed with grief, aye bending low even as the long lithe fronds of the black fern tree." "The month when the *pohutukawa* flowers," "The season when the *Kowhai* is in bloom"—so he punctuates time. And the years that are gone he softly names "dead leaves"!

The Maoris were a nation of singers; so highly did they prize the gifts of poetry and eloquence that at the birth of a son they cooked a *Korimako*—the sweet-throated bell-bird—in the Maori oven, and ate of it at the naming-feast of the child in order that he might have a fine voice and be an admired orator! Their mythology and legends, their history and genealogies—all were handed down in rhythmical recitals. They paddled their canoes to the musical cadences of *waiatas*. They took up arms and went to war with songs; with songs they taunted their foes; with songs they made alliances of peace and friendship. They sang choruses as they broke up their *Kumara* plantations, or felled the trees to build their *whares* and canoes. Their griefs and consolations were expressed in chants; their children sang to cause the rain to cease or the wind to blow; the tattoo-artist, as he deftly wrought the chiselled pattern on face of chief or chieftainness, soothed his victim's pain with thought-diverting melody. Nor were these but the rude rhymes of a barbarous people. "Their dithyrambic chants," says the Rev. Wm. Colenso, "were full of beautiful imagery; as forcible and convincing, as impassioned and affecting, as the poems of Ossian."

In their songs of sentiment, sung, as they always were, in a minor key, is heard the note of Celtic sadness; expressive of abandonment, loneliness, and despair, there sounds through them—

> I know not what ground-tone
> Of human agony.

At the *tangi* over the dead, the friends assembled round the body, and with chaplets of green leaves on their heads

intoned the dirge-like wail "Aue! aue!" while the orator of the tribe recited the funeral chant. Here is the "Lament of a Widow" as given by Colenso, robbed of the liquid Maori vowel-sounds, but preserving the Biblical simplicity of the similes that recall the Psalmist:

Go on setting, thou sun,
Descend into thy cave,
To carry tidings thither,
  Alas! alas!
The tears fall from my eyes,
Welling like a flowing tide,
But thou repliest not—
  Alas! alas!
The flowering plume of *toë* [1]
Gracefully glancing in the sun,
In the seventh moon,
  Alas! alas!
In the eighth moon is blown away,
  Alas! alas!

If there is Celtic sadness in the poetry of the Maori, these is Celtic tenderness in their attitude to the spirit-world. They conceived of their gods, says an experienced student, "as something more than embodiments of power—as beings interested in human affairs and able to see and hear from the highest of the heavens what took place on earth." The land of Nirgensdwo was peopled for them with innumerable beneficent beings. To their trained eyes and ears the woods teem with elf-children and the air is full of shrill voices. They profess to have heard songs of a highly mysterious character sung by spirits of the dead or by fancied *Atuas*, while engaged in fishing out at sea.

The fairies of the Maori are a merry, lightsome, kindly folk; they are for ever singing, like a cricket; they will

[1] *Toëtoë* (four syllables)—the Maori name for the New Zealand congener of pampas-grass.

have their pranks, to be sure; but they can be useful too: they taught the Maoris net-making, for example. They are beautiful creatures, these fairies; not grotesque or ugly like gnomes and goblins, but lithe and graceful like human children; they have long fair hair and clear fair skin. The *pakehas*, perhaps, when first they came, owed something of their friendly welcome to the likeness they bore to the fairies as the Maoris for generations before had thought of them and sung of them.

It was a fearsome thing to come among fairies alone; yet none but the really wicked ever suffered at their hands. Te Kanawa, when he went kiwi-hunting in the hills, was benighted once within the borders of the Fairy Kingdom. While his fire burnt bright, he felt brave enough; but when it flickered low, then out of the shadows trooped the fairies to peep at the intruder. What might they not do to him? He would give his jewels to appease them—his green-stone ear-drop—even the green-stone *tiki* at his neck! They took the shadows of the ear-drop and the *tiki* and handed them about and played with them; and then they ran away. But they knew that Te Kanawa was a kind, honest fellow; so the jewels themselves they left; for the hearts of the fairies are quite content if they get but the shadows of things.

In Maoriland, as in Ireland, there was something of timid affection between men and spirits. They made conciliatory offerings to Naiads and Dryads and Nereids. Rather than grieve the gentle wood-nymphs, the old Maoris would trudge long distances in quest of dead timber and drift-wood for fuel, so as not to break or destroy the graceful shrubs by river-side or estuary shore. So tenderly considerate was their love for sylvan deities that they never felled a tree without first chanting a pleasing song of deprecation to the *genius loci*. After death, the parting soul took its final leave of earth at *Rerenga Wairua*, the Spirits' Leap—the verge of a tall cliff at the extreme north of New Zealand—and so the Maori dead were always laid with

their feet pointing north. Even *Taipo* [1] himself, the Maori devil, had his sociable virtues; he would sit astride the ridge-pole of the house and hold friendly converse with the male inmates, but at the sound of a woman's voice he fled, startled, away! I believe that the Maoris, like Robert Burns, would refuse to despair of the ultimate salvation even of the de'il himsel'.

Close observers of nature, the Maoris weave round the lakes and volcanoes, the geysers and cataracts, of their picturesque islands, stories of romantic fancy, much like the tales of ghouls and fairies, of Carolan and Clooth-na-bare, we read in Yeats's charming book "The Celtic Twilight." To the south of Lake Taupo stand two volcanoes: the rugged peak of Ruapehu, blue and snow-capped; close by, Tongariro, with its graceful cinder-cone still sending out clouds of sulphurous vapour, wind-borne towards the west. Far away westwards, close to the Pacific shore, the sentinel volcano Taranaki, gleaming with snow or wrapped in fleecy mists, rears its lonely summit. Between them flows the most beautiful of our rivers, the Whanganui, winding westward first from the foothills of Tongariro.

Hear the Maori tale of the mountain lovers! Of old, Tongariro, a beautiful maiden, was beloved of two youths, Ruapehu and Taranaki, who had their dwelling near. Both paid her homage, and she liked both passing well. But the gentle Taranaki pleased her more than the stern and masterful Ruapehu, and to him she gave her heart. Under cover of the clouds they told their tale of love, for they feared the anger of the vengeful rival. But a wicked little mountain Karangahape learned their secret and treacherously bore the tale to Ruapehu. Fierce was his wrath; from his crater he plucked the largest rock and hurled it

[1] The etymology of this word is obscure. "It is used by the Maoris believing it to be English and by the English believing it Maori; it being apparently neither." (Williams's "Maori Dictionary.")

at his rival. It hit its mark, but bounded off into the lake, where it lies to this day—the island of Motutaiki. The gentle Taranaki trembled in fear, and, drawing his mantle of snow around him, fled from the scene of his love to the far west. And as he fled, he wept; and his tears are the waters of the broad Whanganui. But when he came to the western shore, the mighty ocean stayed his flight, and there he stands to-day, in solitary grandeur. But Ruapehu's vengeance brought him no good fortune; his love prospered not; and he still frowns coldly in sullen wrath, while the tender Tongariro sends her warm sighs towards the west in token that her heart still burns with love for the banished Taranaki.

Thus romantically does the Maori imagination account for the presence of an extinct volcano on the coast of Taranaki, out of the line of volcanic activity.

This line runs across the middle of the North Island; its most northerly bent is the sulphur crater on Whakaari (White Island) in the Bay of Plenty; the most southerly outlet for its pent-up fires is Ngauruhoe, the cinder cone of Tongariro; between these extreme points lie the hot lakes surrounded by hundreds of springs and geysers, solfataras and fumaroles, the whole region a series of caldrons kept at boiling-point by immense furnaces below the surface. But all these phenomena are comprised within a belt of some hundred miles in width.

It was from a Maori coach-driver, on the road from Taupo to Tokaanu, that I first heard the tale they tell to explain the origin of the Taupo volcanic zone. He was as droll as any jarvey, and the story, to be sure, lost nothing in the telling. But stripped of all his fanciful embroidery the tale he told is briefly this:

Once upon a time there came to this country from Hawaiki the hero Ngatoro-i-rangi, "Great Runner from another world." In the company with him were his wife, the witch who guarded the sacred firebrand, and the youth Ngauruhoe, his favourite slave. After sailing for many

weeks, they came to White Island, and there landed; as the firebrand was burning dim, they gathered logs and brushwood to rekindle it, but when they left, they forgot to put the fire out. This set the island alight, and it is a sulphur volcano to this day—which proves the story true. Soon they landed in the Bay of Plenty at a place called Maketu; and leaving his company there, Ngatoro with his slave Ngauruhoe set his face southwards and journeyed inland to explore the country. In time they came to the mountain Tongariro; they were curious to know what was the white mantle that draped it—for they had come from a land where no snow falls nor any wind blows coldly; so they climbed to the mountain-top. The hero was strong to endure; but the cruel frost gripped the tender Ngauruhoe and he was like to die. Then making a trumpet of his hands, the master called, "Haeremai! Haeremai! Homai te ahi!" ("Come hither! Come hither! Bring hither the fire!") Though more than a hundred miles away, his witch-wife heard him; and the sound of the hero's voice thus calling from afar filled her with apprehensions of calamity. In anxious haste she seized the firebrand and set out to run, straight to where her husband was, her steps guided by the sound of his calling. And the faster she ran, the more anxious she became; she cared not what she did but dashed over lake and stream, through fern and bracken, scattering the sparks of the brand to right and left and setting the countryside ablaze. And that, says the legend, is why so many springs and steam-holes, hot lakes and burning hills, are between Maketu and the mountain. But she came too late; in vain she built the fire around Ngauruhoe and chafed his icy hands and limbs; the favourite slave was dead. And when she saw that he was indeed passed away, a great wrath came upon her; she cursed the inhospitable mountain whose chill heights had bereft the gentle Ngauruhoe of life; and swinging aloft the firebrand, she hurled it into a hollow on the summit, where it lies to this day, now smouldering, now blazing; while ever and again the

mountain quakes with fear and belches forth the flames of terror.

One more story, and I have done. In Caxton's "Golden Legend" we read how St. Patrick rid the country of Ireland of the pest of pig-stealing. When he had exhorted the thief in vain to stand forth and admit his guilt, he smote the ground with his staff and called on the pig to grunt in the belly of him that had eaten it. The pig, responsive, grunted; the wicked thief stood confessed; and thereafter, every man in Ireland kept his own pig in safety. *Mutato nomine*, dog for pig, the story is told in Maori, and Sir George Grey vouches for the antiquity of the legend. Whakaturia, the chief, had a dog stolen, and all in the tribe denied the theft. At length Whakaturia, accompanied by his brother Tama-te-kapua, a *tohunga* (priest) of great renown, entered the village where the thief dwelt. The *tohunga*, in presence of all the people, called on the dog, commanding it to howl in the belly of him that had eaten it. The dog accordingly howled in the belly of a chief named Toi. In vain did Toi hold his mouth close shut, pressing his hands over it. The dog continued to howl away till Toi cursed it, saying, "Oh hush! hush! I thought I had you safe in the big body of Toi and there you are, you dog accursed, still howling." Thus the theft was discovered, the thief was punished, and an end put to dog-stealing ever after.

Rationalists may explain the coincidence by suggesting that St. Patrick and the *tohunga*, like all priests in the youth of the world, were expert ventriloquists. But for me—it almost persuades me boldly to declare the natives of New Zealand *are* Irish! But I call to mind in time the attempt of the Shakespeare critic to prove Prince Hamlet a Dublin man, because he swears by St. Patrick. Forewarned by his example, I forbear.

O. T. J. Alpers.

Wellington, New Zealand.

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